

**United States Department of Labor
Employees' Compensation Appeals Board**

A.S., Appellant)	
)	
and)	Docket No. 23-0437
)	Issued: February 16, 2024
U.S. POSTAL SERVICE, CRENSHAW)	
IMPERIAL POST OFFICE, Inglewood, CA,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 8, 2023 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated November 16, 2022 and January 18, 2023. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's wage-loss compensation benefits, effective November 16, 2022, for failure to complete a Form EN-1032 as

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 21, 2020 decision, a appellant submitted additional evidence to OWCP [and on appeal to the Board]. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

requested; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$16,926.74 for the period December 17, 2011 through November 15, 2022, for which he was not at fault, because OWCP failed to deduct postretirement basic life insurance (PRBLI) premiums from his FECA wage-loss compensation; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$720.64 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On November 22, 2006 appellant, then a 49-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hip and right knee pain due to factors of his federal employment including prolonged standing and walking. OWCP accepted his claim for sprain of unspecified sites, right knee and leg; and sprain of the right hip, ischiocapsular. Appellant did not immediately stop work.

On August 27, 2012 the Office of Personnel Management (OPM) advised OWCP that appellant was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that appellant had elected PRBLI coverage (with no reduction), basic life insurance (BLI) coverage, and optional life insurance (OLI) coverage (Option A and B 1X with no reduction) effective December 17, 2011. OPM noted that the deductions for BLI and OLI should be made based on appellant's annual salary of \$56,508.00. OWCP also received the first page of a FEGLI form entitled Continuation of Life Insurance Coverage as an Annuitant or Compensation, which appellant had signed on March 1, 2012. The form indicated that he selected PRBLI with no reduction in his BLI coverage postretirement. The last paragraph of this page referenced OLI checking Option A and B with no reduction.

On September 19, 2022 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous year and that a Form EN-1032 was enclosed for that purpose. It advised him that he must fully answer all questions on the enclosed Form EN-1032 and return it within 30 days or his benefits would be suspended. OWCP mailed the letter to appellant's last known address. No response was received.

By decision dated November 16, 2022, OWCP suspended appellant's wage-loss compensation benefits, effective that day, due to his failure to submit the Form EN-1032, as requested. It advised that, if he were to complete and return the form, his compensation benefits would be restored retroactively to the date they were suspended.

On December 13, 2022 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$16,926.74 for the period December 17, 2011 through November 15, 2022, because PRBLI premiums had not been properly deducted from his compensation payments. It summarized its calculation of the

overpayment and advised him that he was without fault in its creation.³ OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request waiver of recovery of the overpayment. It also requested that he provide financial documentation including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records that support income and expenses. OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter he could request a final decision based on the written evidence, or a prerecoupment hearing.

On January 12, 2023 appellant requested that OWCP issue a decision based on the written evidence. In an overpayment action request form dated January 12, 2023 and received by OWCP, on January 17, 2023, he disagreed with the overpayment, and requested waiver of recovery of the overpayment because he was found to be without fault in the creation of the overpayment. Appellant submitted a Form OWCP-20 of the same date and reported total monthly income of \$2,882.55, and total monthly expenses of \$3,324.73. He reported cash on hand of \$100.00, a checking account balance of \$1,317.00, and a savings account balance of \$695.00. Appellant submitted bank statements from several bank accounts.

By decision dated January 18, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$16,926.74 for the period December 17, 2011 through November 15, 2022, because PRBLI premiums had not been properly deducted from his compensation payments. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP stated, “[a]s of this date, no response has been received to the Preliminary Overpayment Determination. You have not requested a waiver of the overpayment and it should be finalized for the reasons set forth in the preliminary decision.” It required recovery of the overpayment by deducting \$720.64 every 28 days from appellant’s continuing compensation payments.

³ The amount of the deduction can be calculated by multiplying the monthly rate by 12 months, divided by 52 weeks, divided by 7 days, multiplied by the number of calendar days, multiplied by \$59,000.00 of annual life insurance coverage. The period of December 17 through 31, 2011 is calculated at the monthly rate 2.15 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 15 calendar days, multiplied by \$59,000.00 is \$62.73. The period of January 1, 2012 through August 23, 2014 is calculated at the monthly rate 2.265 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 966 calendar days, multiplied by \$59,000.00 is \$4,260.17. The period of August 24, 2014 through December 31, 2015 is calculated at the monthly rate 1.94 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 495 calendar days, multiplied by \$59,000.00 is \$1,867.84. The period of January 1, 2016 through September 30, 2021 is calculated at the monthly rate 2.13 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 2,100 calendar days, multiplied by \$59,000.00 is \$8,700.23. The period of October 1, 2021 through August 31, 2022 is calculated at the monthly rate 2.59 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 335 calendar days, multiplied by \$59,000.00 is \$1,687.63. The period of September 1 through 25, 2022 is calculated at the monthly rate 2.59 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 25 calendar days, multiplied by \$59,000.00 is \$125.94. The period of September 26 through November 15, 2022 is calculated at the monthly rate 2.24 multiplied by 12 months, divided by 52 weeks, divided by 7 days, multiplied by 51 calendar days, multiplied by \$59,000.00 is \$222.20.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.⁴

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months.⁵ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 16, 2022, for failure to complete the Form EN-1032 as requested.

On September 19, 2022 OWCP provided appellant with a Form EN-1032. It properly advised him that, if he did not completely answer all of the questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly mailed to appellant's last known address of record and there is no indication that it was returned as undeliverable.⁷ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.⁸

The record indicates that appellant failed to timely submit the Form EN-1032 within 30 days of OWCP's request. His failure to file a Form EN-1032 within 30 days resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective November 16, 2022, pursuant to 20 C.F.R. § 10.528.⁹

⁴ 5 U.S.C. § 8106(b).

⁵ 20 C.F.R. § 10.528. *See also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *M.S.*, Docket No. 18-1107 (issued December 28, 2018); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁶ *Id.*; *see also id.* at § 10.525.

⁷ *See H.B.*, *supra* note 5; *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁸ *Id.*

⁹ *See R.S.*, Docket No. 22-0773 (issued May 22, 2023); *R.B.*, Docket No. 20-0176 (issued June 25, 2020); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

LEGAL PRECEDENT -- ISSUE 2

FECA¹⁰ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.¹¹ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹²

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.¹³ The coverage for basic life insurance is effective unless waived,¹⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.¹⁵ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹⁶ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁷ however, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.¹⁸

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject

¹⁰ *Supra* note 1.

¹¹ 5 U.S.C. § 8102(a).

¹² *Id.* at § 8129(a).

¹³ *Id.* at § 8702(a).

¹⁴ *Id.* at § 8702(b).

¹⁵ *Id.* at § 8707.

¹⁶ *Id.* at § 8706.

¹⁷ *Id.* at § 8707(b)(2).

¹⁸ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992); *see also Glen B. Cox*, 42 ECAB 703 (1991).

to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹⁹

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.²⁰ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.²¹

OWCP's procedures, regarding PRBLI, provide:

"PRBLI prevents a life insurance benefit reduction at age 65. The default reduction is a reduction of 75 [percent], but the claimant can elect either 'No Reduction' or '50 [percent] Reduction.' Claimants must elect this coverage when separated or retired from Federal employment. The coverage is effective immediately, and the premiums continue until death. Prior to age 65, the claimant must pay for both BLI and PRBLI if it has been elected."²²

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.²³

ANALYSIS -- ISSUE 2

The Board finds that appellant received an overpayment of compensation in the amount of \$16,926.74, for the period December 17, 2011 through November 15, 2022, for which he was without fault, because OWCP did not deduct PRBLI premiums from his FECA wage-loss compensation.

OWCP did not deduct the PRBLI Premiums from appellant's wage-loss compensation benefits for the period December 17, 2011 through November 15, 2022. As such, it calculated the amount of the resulting overpayment as \$16,926.74. The record contains the compensation payment record, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred.

¹⁹ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

²⁰ 5 C.F.R. § 870.504(a)(1).

²¹ *Id.* at § 504(b).

²² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15c(3) (February 2013).

²³ 5 U.S.C. § 8707(d); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he had selected.²⁴ Moreover, as noted, when an underwithholding of PRBLI premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.²⁵

As OWCP failed to properly deduct PRBLI premiums for the period December 17, 2011 through November 15, 2022, appellant received an overpayment of \$16,926.74 during this period.²⁶ The Board thus finds that OWCP properly determined the fact and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.²⁷

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²⁸ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²⁹ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such

²⁴ 5 C.F.R. § 870.504(b); *see J.H.*, Docket No. 20-0281 (issued May 18, 2021); *S.P.*, Docket No. 17-1888 (issued July 18, 2018); *Cf. Charles F. Huisman*, Docket No. 93-2298 (issued January 29, 1996); *John E. Rowland*, 39 ECAB 1377 (1988).

²⁵ 5 U.S.C. § 8102.

²⁶ *J.H.*, *supra* note 24; *see I.J.*, Docket No. 19-1672 (issued March 10, 2020); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

²⁷ 5 U.S.C. § 8129.

²⁸ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²⁹ *Id.* at Chapter 6.400.4a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.³⁰

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.³¹

ANALYSIS -- ISSUE 3

The Board finds that this case is not in posture for decision.

In the case of *William A. Couch*,³² the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on January 17, 2023, appellant submitted an overpayment action request form dated January 12, 2023, and disagreed with the overpayment, and requested a waiver because he was found to be without fault in the creation of the overpayment. He further requested OWCP issue a decision based on the written evidence. Appellant also submitted a Form OWCP-20 of the same date and supporting bank statements. OWCP, however, did not review this additional evidence in its January 18, 2023 decision. It, thus, failed to follow its procedures by not reviewing all of the relevant evidence of record.³³

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.³⁴ The Board finds that this case is not in posture for decision, as OWCP did not consider and address the above-noted evidence in its January 18, 2023 decision.³⁵ On remand, following any such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

³⁰ 20 C.F.R. § 10.437(a), (b).

³¹ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

³² 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

³⁴ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 32.

³⁵ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 16, 2022, for failure to complete a Form EN-1032 as requested. The Board further finds that appellant received an overpayment of compensation in the amount of \$16,926.74 for the period December 17, 2011 through November 15, 2022, for which he was without fault, because OWCP failed to deduct PRBLI premiums from his FECA wage-loss compensation. The Board further finds that the case is not in posture for decision with regard to waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2022 and January 18, 2023 decisions of the Office of Workers' Compensation Programs are affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 16, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board