

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

E.T., Appellant)	
)	
and)	Docket No. 24-0106
)	Issued: February 23, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
El Monte, CA, Employer)	
)	

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

Case Submitted on the Record

ORDER REVERSING CASE

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

On October 11, 2023 appellant filed a timely appeal from an August 1, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0106.¹

On October 5, 1995 appellant, then a 33-year-old revenue officer, filed an occupational disease claim (Form CA-2) alleging that she developed stress, depression, and paranoia due to factors of her federal employment. She noted that she first became aware of her conditions on May 18, 1995 and first realized that her conditions were caused or aggravated by her federal employment on July 7, 1995. Appellant stopped work on July 6, 1995 and has not returned.

On August 19, 1998 OWCP accepted the claim for acute stress; post-traumatic stress disorder; single episode of major depression, severe with mention of psychotic behavior;

¹ The Board notes that, following the issuance of the August 1, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

generalized anxiety disorder; and psychic factors with conditions classified elsewhere. It then paid appellant wage-loss compensation on the periodic rolls, effective September 15, 1996.

In an October 14, 2003 Form RI 76-13, the Office of Personnel Management (OPM) indicated that the final salary rate on which appellant's group life insurance was based was \$35,465.00. It further indicated that post-retirement basic life insurance (PRBLI) with no reduction withholding should begin on August 8, 1998 and that she had basic life insurance (BLI), optional life insurance (OLI), Option A standard, Option B times five multiples with no reduction, and Option C times one multiple with no reduction.

By letter dated December 9, 2022, OPM informed OWCP that as a compensationier the employee was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of BLI, OLI, and PRBLI coverage. The final base salary on which FEGLI was based was \$33,330.96. OPM requested that OWCP deduct life insurance premiums for appellant under code Z1 for BLI at no reduction, option A standard, option B five times salary at no reduction, and option C one time at full reduction (OLI under age 65). It also informed OWCP that it had sent the Form RI 76-13 on October 14, 2003 and a letter on February 27, 2020² indicating no reduction for BLI premiums.

In an overpayment referral memorandum dated December 27, 2022, OWCP indicated an overpayment had occurred during the period August 7, 1998 through December 3, 2022 because no reduction for PRBLI premiums had been deducted from appellant's wage-loss compensation. It further indicated that her wage-loss compensation would be adjusted to include PRBLI premiums effective December 4, 2022.

In a separate letter dated December 27, 2022, OWCP informed appellant that the OLI code would change from Option C times one time at no reduction to option C times one with full reduction, and PRBLI reduction at no reduction. It indicated that the commencing date for these changes was effective August 7, 1998.

In an automated compensation payment system form of even date, OWCP noted that it had deducted a premium for PRBLI at no reduction and BLI option C one time with full reduction from appellant's continuing compensation payment for the period December 4 through 31, 2022, as instructed by OPM. Appellant's final base salary on which FEGLI was based was \$33,330.96.

A manual adjustment form dated May 8, 2023, noted that appellant had elected PRBLI coverage effective August 7, 1998; however, no action had been taken to deduct her premiums until December 4, 2022. The form noted that she had received \$759,208.63 in net compensation from August 7, 1998; however, PRBLI premiums should have been deducted in the amount of \$22,856.73, therefore, appellant should have only received net compensation in the amount of \$736,351.89.

OWCP, in a preliminary overpayment determination dated May 8, 2023, notified appellant that she had received an overpayment of compensation in the amount of \$22,856.74 because it failed to deduct PRBLI premiums from her FECA compensation for the period August 7, 1998

² The Board notes that OPM's February 27, 2020 letter is not contained in the case record.

through December 3, 2022. It provided its calculations on the amount of compensation paid during the period. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, it advised her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing. No response was received within the allotted time.

In a May 10, 2023 letter, OWCP advised OPM that a copy of appellant's life insurance coverage election form (Form SF-2818) indicating her PRBLI election did not accompany the October 14, 2023 Form RI 76-13 or December 9, 2022 letter, and requested submission of this form. It afforded 30 days for a response.

On June 13, 2023 OWCP received a Form SF-2818, signed by appellant on September 15, 2002 in which she elected to receive BLI with no reduction; OLI Option A; OLI Option B with five reduction multiples and no reduction; and OLI Option C with one no reduction multiple and no full reduction multiples. No effective date was noted on the form.

By decision dated August 1, 2023, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$22,856.74 because it failed to properly deduct PRBLI premiums from her FECA compensation for the period August 7, 1998 through December 3, 2022. It further found that she was without fault in creation of the overpayment, but denied waiver of recovery of the overpayment because she had not responded to the overpayment recovery questionnaire or otherwise provided the financial information necessary to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$728.09 from appellant's continuing compensation payments every 28 days.

The Board, having duly considered this matter, finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$22,856.74 for the period August 7, 1998 through December 3, 2022.

The case record contains an SF 2818, signed by appellant on September 15, 2002 in which she elected to receive BLI with no reduction; OLI Option A; OLI Option B with five multiples and no reduction; and OLI Option C with one no reduction multiple and no full reduction multiples. However, no effective date is noted on the form.

The Board has held that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement.³ The Board has further held that OWCP must document when a claimant elected life insurance coverage after separation

³ See *J.R.*, Docket No. 21-1290 (issued March 6, 2023); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018); *N.J.*, Docket No. 13-2164 (issued April 18, 2014).

from federal service or retirement in order to establish the fact of overpayment of compensation.⁴ While the case record contains an election form signed on September 15, 2002 the form does not note the effective date of the election.⁵ Therefore, as OWCP has not fully established appellant's election of OLI, BLI, and/or PRBLI, the Board finds it has not met its burden of proof to establish that a \$22,856.74 overpayment was created for the period August 7, 1998 through December 3, 2022.⁶ Accordingly,

IT IS HEREBY ORDERED THAT the August 1, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 23, 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

⁴ See *S.B.*, Docket No. 20-1496 (issued July 14, 2021).

⁵ See *J.R.*, *supra* note 3; *S.B.*, *id.*

⁶ *Id.*