

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

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H.W., Appellant)	
)	
and)	Docket No. 14-1315
)	Issued: July 1, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Austin, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2014 appellant filed a timely appeal from a February 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,893.27 from October 2, 2004 to January 11, 2014; and (2) whether it abused its discretion in denying waiver of the overpayment.

FACTUAL HISTORY

Appellant, a 54-year-old mail processing clerk, filed a Form CA-2 claim for benefits based on occupational disease on October 21, 2001 alleging that she developed right shoulder

¹ 5 U.S.C. § 8101 *et seq.*

and neck conditions causally related to employment factors. OWCP accepted the claim for cervical strain, recurrent dislocation of the right shoulder region, bilateral rotator cuff sprain of the shoulder and upper arm, and other affections of the right shoulder region. It paid appellant compensation for temporary total disability compensation. Appellant was placed on the periodic rolls as of September 16, 2003.

On October 3, 2008 appellant signed a Federal Employees' Group Life Insurance (FEGLI) form for continuation of life insurance coverage. She indicated by check mark that she wanted no reduction in her basic or optional life insurance coverage.

The record reflects that appellant returned to work on August 29, 2009, and then again began receiving disability compensation benefits as of May 12, 2010.

In a letter dated August 27, 2009 from the Office of Personnel Management (OPM) to OWCP, it was noted that as a compensationner appellant was eligible to continue FEGLI coverage. It further stated that she had elected postretirement life insurance option B with no reduction. The commencing date for postretirement deductions was October 2, 2004.

On May 15, 2013, at age 65, appellant signed an election form selecting to freeze all option B (additional) life insurance at the value as of age 65, to continue for life, which meant that the value of her option B coverage would continue at the same level for life.

In a November 4, 2013 letter from OPM to OWCP, it was indicated that appellant's premiums had not been collected for the election of postretirement life insurance with no reduction. OPM indicated that the start date for postretirement deductions had been October 2, 2004 and that the final base salary on which FEGLI was based was \$44,496.00.

On January 13, 2014 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$9,893.27 from October 2, 2004 to January 11, 2014. It noted that the overpayment had occurred because appellant's premiums had not been correctly deducted for the postretirement life insurance, no reduction option, and that the start date for postretirement deductions was October 2, 2004. As a result of this error, appellant had been overpaid for the period October 2, 2004 through January 11, 2014 in the amount of \$9,893.27.

In an OWCP pay rate worksheet accompanying the notice of overpayment, it calculated the overpayment by adding the deductions from three periods: (1) October 2, 2004 to January 17, 2009, which it determined 56 (28-day) pay periods had no premiums deducted, for a total overpayment of \$4,445.84; (2) January 18, 2009 to January 14, 2012, for which it determined 39 (28-day) pay periods had no premiums deducted for a total overpayment of \$3,350.01; and (3) January 15, 2012 to January 11, 2014, for which it determined 26 (28-day) pay periods had no premiums deducted for a total overpayment of \$2,188.42. These three overpayment periods were then added together for a total overpayment of \$9,984.27.

OWCP then determined that, pursuant to the option life differential in codes WO and option B freeze, appellant was owed a credit of \$91.00 for the period January 13, 2013 to January 11, 2014. It calculated this amount by subtracting the correct deduction of \$278.94 from \$285.94, rounding this figure to \$7.00, which, when multiplied by 13 pay periods, amounted to \$91.00. OWCP then subtracted \$91.00 from \$9,984.27 for a total overpayment of \$9,893.27.

OWCP further advised that appellant had been found without fault for the creation of the overpayment. It advised her that, if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention or request a prerecoupment hearing. OWCP further advised appellant that, when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience. It did not receive appellant's response to this letter within 30 days.

In a decision dated February 13, 2014, OWCP finalized the preliminary determination regarding the overpayment of \$9,893.27. It found that appellant was not entitled to waiver because she did not respond to the January 13, 2014 preliminary determination and did not complete and submit the attached Form OWCP-20 overpayment questionnaire within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance with one or more options. The coverage for basic life is effective unless waived and premiums for basic and optional life coverage are withheld from the employees' pay. With certain restrictions, insurance benefits continue postretirement. Insurance remains in effect until canceled and premiums due are to be deducted from the injured employees' compensation payments.² When FEGLI premiums, including postretirement insurance premiums, are incorrectly withheld the entire amount of the unpaid premium is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.³

OWCP procedures state that the reason for any overpayment must be clearly stated in the preliminary decision and OWCP should provide a clearly written explanation indicating how the overpayment was calculated.⁴

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$9,893.27 from October 2, 2004 to January 11, 2014.

OWCP determined that an overpayment had been created because postretirement life insurance premiums had not been properly deducted from her compensation for that period. The January 13, 2014 worksheets indicated that premiums for basic life and postretirement no reduction option had not been deducted from October 2, 2004 to January 11, 2014. OWCP however failed to explain why these premiums should have been retroactively collected continuously since October 2, 2004. The record reflects that appellant was placed on the

² 20 C.F.R. §§ 870-73.

³ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

periodic rolls on September 16, 2003, but returned to work on August 29, 2009, and then again began receiving disability compensation benefits as of May 12, 2010. Appellant signed a FEGLI form on October 3, 2008 selecting no reduction in basic or optional life insurance coverage, yet the OPM letter dated August 27, 2009 indicated that the commencing date for postretirement deductions was October 2, 2004. OWCP must provide the reason for the overpayment and it has failed to properly explain the basis for the retroactive commencement date of October 2, 2004.⁵

The Board also finds that OWCP has not explained its calculation that indicated that these premiums were owed to OPM during the period August 29, 2009 to May 12, 2010 during which appellant had returned to work. OWCP also has not explained why it calculated that premiums should have been deducted for 26 (28-day) pay periods from January 15, 2012 to January 11, 2014, since this period encompassed a period of only 13 months.

There is no evidence of record documenting the accuracy of the dates for which premiums reportedly should have been collected on behalf of OPM. Accordingly, the Board finds that without supporting documentation OWCP improperly found that appellant received an overpayment of compensation of \$9,893.27 from October 2, 2004 to January 11, 2014.⁶

CONCLUSION

The Board will set aside OWCP's finding of fact and amount of overpayment. Upon return of the case record, OWCP shall further develop the case as necessary and thereafter issue an appropriate decision.

⁵ K.K., Docket No. 14-699 (issued June 5, 2015).

⁶ In light of this disposition, the Board finds that it is premature to address the waiver issue.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2014 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded in accordance with this opinion.

Issued: July 1, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board