

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

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**D.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer**

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**Docket No. 15-0341  
Issued: April 18, 2016**

*Appearances:*  
*Stephen V. Hunt, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On December 3, 2014 appellant, through counsel, filed a timely appeal from an October 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 \$1,343.80 because OWCP failed to correctly withhold premiums for the optional postretirement basic life insurance for the period December 29, 2012 to October 19, 2013; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly found that the overpayment should be recovered by deducting \$285.00 from appellant's continuing compensation.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on November 6, 2011 appellant, then a 56-year-old maintenance mechanic, strained his lower back while lifting mail at work. He stopped work on November 7, 2011. OWCP accepted appellant's claim for sprain of the lumbosacral joint or ligament, and thoracic or lumbosacral neuritis or radiculitis. It paid disability compensation. On January 25, 2012 appellant was placed on the periodic rolls.

In a letter dated June 6, 2013, the Office of Personnel Management (OPM), Retirement Operations Center, informed OWCP that as a compensation, appellant was eligible to continue Federal Employees' Group Life Insurance. The final base salary on which appellant's Life Insurance benefit was based was \$58,601.00. The elections were listed as "no [r]eduction" for postretirement optional basic life insurance and Code E5 for "Basic" and "Option C x 5 no reduction". The commencement date for these deductions was December 29, 2012.

In an audit conducted by OWCP on November 12, 2013 it was determined that appropriate premiums for the postretirement basic life insurance elections, with zero percent reduction, had not commenced until October 20, 2013. Appellant had, therefore, received an overpayment in the amount of \$1,343.80.

On November 20, 2013 OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$1,343.80 for the period December 29, 2012 to October 19, 2013<sup>2</sup> because OWCP had not withheld appropriate premiums for postretirement life insurance. It found that he was without fault in the creation of the overpayment and requested that he provide financial information in order to determine his eligibility for waiver of recovery of the overpayment.<sup>3</sup> Appellant was advised that if he failed to complete the Form OWCP-20 or to submit financial documents in support of waiver within 30 days, pursuant to 20 C.F.R. § 10.438, waiver would be denied. No additional information was received from appellant.

By decision dated December 23, 2013, OWCP finalized its preliminary determination and found that appellant had received an overpayment in the amount of \$1,343.80. It denied waiver of recovery of the overpayment because OWCP had received no financial documentation or a completed overpayment recovery questionnaire upon which to base its decision. OWCP determined that it would deduct \$285.00 every 28 days from his continuing compensation benefits.

On January 3, 2014 OWCP received appellant's request for a precoupment hearing on the issue of fault and overpayment. Appellant believed that the overpayment occurred through

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<sup>2</sup> In its November 20, 2013 preliminary determination, OWCP incorrectly identified October 29, 2013 as the date of the end of the overpayment period instead of October 19, 2013. The correct date was used when calculating the overpayment amount.

<sup>3</sup> OWCP calculated the overpayment by taking the daily premium of \$4.56, which should have been deducted, and multiplying it by 15 days for the period December 29, 2012 to January 12, 2013, which totaled \$68.40. It then took the 28-day premium amount of \$127.54 and multiplied it by 10 months for the period January 13 to October 19, 2013, which totaled \$1,275.40, for a total in overpayment of \$1,343.80.

no fault of his own and requested a waiver. He contended that he was never informed or notified that he was responsible for paying any increased premiums from his OWCP income.

In a completed overpayment recovery questionnaire form, appellant provided his income, expenses, assets, and liabilities.

Appellant submitted a form dated January 17, 2014 requesting that any postretirement optional life insurance coverage be cancelled and in a second form dated January 17, 2014, he requested that his life insurance be changed to a 75 percent reduction option (which is the option with no cost to the compensationner).

On January 28, 2014 OWCP vacated the December 23, 2013 overpayment decision as appellant's request for a pre-recoupment hearing had been timely received prior to the overpayment decision.

On July 11, 2014 a pre-recoupment hearing was held. Appellant did not disagree with the existence or amount of the overpayment, but contended that he should be entitled to waiver due to his financial situation. Counsel for appellant argued that appellant's lack of income had created a hardship, and that denial of waiver would be against equity and good conscience as appellant's wife had suffered from acute illnesses and health conditions that required his disability income. Counsel stated that appellant's condition both physically and emotionally would diminish if he did not receive full disability income. He also contended that denial of waiver would defeat the purpose of FECA because appellant needed all of his disability income to meet ordinary and necessary expenses.

OWCP's hearing representative noted that in his overpayment recovery questionnaire appellant had reported income of only \$2,854.46 but his OWCP disability compensation was \$3,023.60. He also noted that, although appellant had submitted financial documents and bills, there was insufficient evidence to support appellant's expenses. The hearing representative advised appellant that the record would be held open for a period of 30 days to submit an updated Form OWCP-20 and documentation of income and expenses.

In a September 6, 2014 statement, counsel requested that appellant's overpayment be forgiven in its entirety because it occurred through no fault of appellant. He also requested that monthly payments be no more than \$53.80 in his effort to clear the account without additional hardship.

In a decision dated October 7, 2014, the hearing representative finalized the preliminary determination, finding that appellant had received an overpayment in the amount of \$1,343.80 for the period December 29, 2012 to October 19, 2013. She further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative found that although he had listed his financials, he had failed to submit the required documentation to support his stated income and expenses as requested. She determined that OWCP would deduct \$285.00 every 28 days from his continuing compensation benefits.

## LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>4</sup> The coverage for basic life insurance is effective unless waived,<sup>5</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</sup> 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.<sup>7</sup> Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,<sup>8</sup> however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.<sup>9</sup>

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 the 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 to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).<sup>10</sup>

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.<sup>11</sup> Any employee who

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<sup>4</sup> 5 U.S.C. § 8702(a).

<sup>5</sup> 5 U.S.C. § 8702(b).

<sup>6</sup> 5 U.S.C. § 8707.

<sup>7</sup> 5 U.S.C. § 8706.

<sup>8</sup> 5 U.S.C. § 8707(b)(2).

<sup>9</sup> 5 U.S.C. § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

<sup>10</sup> *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>11</sup> 5 C.F.R. 870.504 (a)(1)

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.<sup>12</sup> When an under-withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to the OPM upon discovery of the error.<sup>13</sup>

FECA 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 duty.<sup>14</sup> 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.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the case is not in posture for decision as OWCP has not properly determined that an overpayment of \$1,343.80 was created from December 29, 2012 to October 19, 2013.

OPM informed OWCP that appellant had elected, as a compensation, to receive optional postretirement basic life insurance benefits, at no reduction, commencing December 29, 2012. The record reflects that OWCP failed to make any postretirement insurance premium deductions from December 29, 2012 to October 19, 2013.

The Board finds, however, that the record does not provide any evidence that appellant signed a document electing the optional no reduction postretirement basic life insurance benefit. This information was provided to OWCP by OPM in a letter, but the record does not contain any supporting documentation. While the employing establishment completed a CA-7 form on January 17, 2012 indicating that appellant had both basic and optional life insurance, Class E-5, the record does not include the form signed by appellant, electing the no reduction option for postretirement basic life insurance. The Board has previously found that OWCP must document whether and when appellant elected life insurance coverage after retirement.<sup>16</sup>

In the case *N.J.*,<sup>17</sup> the Board remanded the case to OWCP for further development because the evidence was unclear as to why postretirement insurance deduction were made as of a certain date. Similarly, in this case the evidence of record fails to establish the basis for the optional postretirement basic life insurance premiums at the no reduction option, as the record does not contain a signed election form. It is unclear from the record why OPM informed

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<sup>12</sup> *Id.* At 504(b).

<sup>13</sup> 5 USC § 8707(d); see also *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>14</sup> 5 U.S.C. § 8102(a).

<sup>15</sup> *Id.* at § 8129(a).

<sup>16</sup> *J.L.*, Docket No. 14-1094 (issued June 25, 2015); see also *R.W.*, Docket No. 11-1303 (January 9, 2012).

<sup>17</sup> Docket No. 13-2164 (April 18, 2014).

OWCP that premiums for postretirement basic life insurance at no reduction should have been deducted as of December 29, 2012.

Appellant would be responsible for the additional cost associated with his election of the optional postretirement basic life insurance. However, as OWCP has not factually established that appellant elected the optional coverage, there can be no finding of overpayment. As the fact and amount of overpayment are not clearly established by the record, case will be remanded to OWCP. On remand, OWCP should obtain from OPM the executed election form completed by appellant prior to determining whether appellant received an overpayment of compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.<sup>18</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 8, 2014 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: April 18, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>18</sup> As the issues of fact and amount of overpayment are to be further developed upon return of the case record, the issues of waiver and recovery of the overpayment are not in posture for decision at this time. *See S.G.*, Docket No. 14-769 (issued December 9, 2014); *see also J.H.*, Docket No. 07-656 (issued July 26, 2007).