

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

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**J.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
American Fork, UT, Employer**

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**Docket No. 16-1268  
Issued: November 21, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 6, 2016 appellant filed a timely appeal from an April 1, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly issued its April 1, 2016 overpayment decision.

**FACTUAL HISTORY**

This case has previously been before the Board. In a decision dated June 25, 2015, the Board set aside a February 5, 2014 decision, finding that appellant received a \$1,242.66

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<sup>1</sup> Appellant submitted new evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal as it was not in the record at the time OWCP rendered its final decision; *see* 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

overpayment of compensation from April 1, 2012 to February 8, 2013 because OWCP failed to deduct premiums for postretirement basic life insurance.<sup>3</sup> The Board found that the case was not in posture for decision regarding whether he received an overpayment of compensation as the record did not contain sufficient evidence to establish that he elected postretirement basic life insurance with no reduction. The Board instructed OWCP on remand to obtain the executed election form documenting appellant's election of postretirement basic life insurance. The facts and circumstances as set forth in the prior decision are incorporated herein by reference.

On remand OWCP obtained a May 18, 2004 Federal Employees Group Life Insurance (FEGLI) continuation of life insurance coverage form completed by appellant. Appellant elected basic life insurance in retirement with no reduction and option B with two multiples and no reduction. He did not elect Option C. OWCP also received agency certification of insurance status forms, indicating that as of appellant's retirement on May 7, 2004, he had insurance Option A and insurance Option B with five multiples. It also received FEGLI forms completed by appellant on December 11, 1973, November 8, 1974, and November 6, 1980.

By decision dated April 1, 2016, OWCP found that appellant received an overpayment of compensation in the amount of \$1,242.66 because it did not deduct premiums for postretirement basic life insurance for the period April 1, 2012 through February 8, 2013. It further determined that he was not entitled to waiver of recovery of the overpayment and noted that he had repaid the debt in full.

On appeal appellant contends that he did not have life insurance after retirement.

### **LEGAL PRECEDENT**

Section 10.431 of FECA's implementing regulations provides that, before seeking to recover an overpayment or adjust benefits, OWCP will advise the individual in writing that the overpayment exists and the amount of the overpayment.<sup>4</sup> The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>5</sup> Additionally, OWCP is obliged to advise the individual of his right to inspect and copy the government records relating to the overpayment.<sup>6</sup> Finally, the preliminary notice must inform the individual of his right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.<sup>7</sup> The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice either in writing or at a precoupment hearing.<sup>8</sup> The evidence must be presented or the hearing requested within

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<sup>3</sup> Docket No. 14-1094 (issued June 25, 2015).

<sup>4</sup> 20 C.F.R. § 10.431(a).

<sup>5</sup> *Id.* at § 10.431(b).

<sup>6</sup> *Id.* at § 10.431(c).

<sup>7</sup> *Id.* at § 10.431(d).

<sup>8</sup> *Id.* at § 10.432.

30 days of the date of the written notice of overpayment.<sup>9</sup> Failure to request the hearing within this 30-day time period shall constitute waiver of that right.<sup>10</sup>

OWCP procedures provide that, once an overpayment is identified and calculated, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, OWCP is responsible for issuing a final decision.<sup>11</sup> These procedures note that, if the claimant is determined to be with fault, preliminary finding notice (Form CA-2201) must be released within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of fault must be clearly stated. Form CA-2201 informs the claimant of the right to submit evidence and the right to a prerecoupment hearing on the issues of: (a) fact and amount of overpayment; (b) fault; and (c) waiver. Along with Form CA-2201, OWCP should provide a clearly written statement explaining how the overpayment was calculated.<sup>12</sup>

### ANALYSIS

By decision dated June 25, 2015, the Board set aside a February 5, 2014 decision finding that appellant received an overpayment of compensation because OWCP failed to deduct premiums for postretirement basic life insurance. It instructed OWCP to further develop the factual evidence to determine whether he elected postretirement basic life insurance.

On remand, OWCP issued an April 1, 2016 decision again finding that appellant received an overpayment of compensation in the amount of \$1,242.66 because it failed to deduct postretirement basic life insurance premiums from April 1, 2012 to February 8, 2013. The Board finds, however, that OWCP failed to follow its procedures in issuing its April 1, 2016 overpayment decision. OWCP regulations provide that before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of overpayment.<sup>13</sup> It must inform the individual of his right to challenge the fact or amount of the overpayment, the right to contest any preliminary finding of fault in the creation of the overpayment and the right to request a waiver of recovery of the overpayment.<sup>14</sup> OWCP procedures further provide that a preliminary finding of overpayment must be provided within 30 days and clearly identify the reason that the overpayment occurred.<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4 (June 2009).

<sup>12</sup> *Id.* at Chapter 2.600.4(a)(1) (June 2009).

<sup>13</sup> 20 C.F.R. § 10.431(a).

<sup>14</sup> *Id.* at § 10.431(d).

<sup>15</sup> *See supra* note 11.

Following its development of the factual evidence on remand, OWCP did not issue a new preliminary determination notifying appellant of its findings, providing him with the right to challenge the fact or amount of overpayment or allowing him to submit new information regarding waiver of recovery of the overpayment. Consequently, it did not comply with the procedural rights afforded to appellant under its regulations.<sup>16</sup> The Board, therefore, finds that the case must be remanded for OWCP. On remand OWCP shall issue a preliminary determination to appellant regarding any overpayment, in accordance with its procedures, prior to making any final overpayment determination.

### **CONCLUSION**

The Board finds the case not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 1, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 21, 2016  
Washington, DC

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

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

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

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<sup>16</sup> *Id.* at §§ 10.431, 10.432; *see also M.V.*, Docket No. 14-1131 (issued November 14, 2014); *K.H.*, Docket No. 11-603 (issued September 27, 2011).