

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

---

**L.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Elephant Butte, NM, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 17-1393  
Issued: March 20, 2018**

*Appearances:*  
*Appellant, pro se*  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 12, 2017 appellant filed a timely appeal from a May 22, 2017 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 to consider 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 \$1,387.01 for the period May 14, 2016 to April 1, 2017; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments.

---

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

## **FACTUAL HISTORY**

On March 31, 2015 appellant, then a 45-year-old sales and service distribution associate, injured both shoulders when a gate fell on her in the performance of duty. OWCP initially denied appellant's claim, but on January 22, 2016 accepted concussion without loss of consciousness and sprain of the ligaments of the cervical and lumbar spine. It subsequently expanded the acceptance of her claim to include cervical disc displacement, occipital atlanto axial region, and intervertebral disc displacement of the lumbosacral region. Appellant stopped work on March 31, 2015 and did not return.

In a pay rate memorandum dated April 15, 2016, OWCP indicated that appellant's date-of-injury annual salary was \$54,499.15 per year and she elected basic life insurance and optional life insurance code "X0." Appellant received continuation of pay from April 23 to May 22, 2015. Beginning May 23, 2015, OWCP paid appellant wage-loss compensation for temporary total disability. On November 13, 2016 it placed her on the periodic rolls and a periodic disability worksheet, dated November 17, 2016, indicated that appellant was placed on the periodic rolls for ongoing total disability. The employing establishment reported corrected earnings on October 25, 2016 which required a new pay rate.

In a Form CA-1049, dated November 18, 2016, OWCP outlined appellant's entitlement to compensation benefits. It indicated that appellant's regular payments included deductions for health benefits, code 472, basic life insurance, and optional life insurance.<sup>2</sup>

In a March 16, 2017 letter, the Office of Personal Management (OPM) notified OWCP that appellant's salary rate on which the Federal Employees' Group Life Insurance (FEGLI) was based was \$56,791.00. It advised that appellant elected code X0, basic life insurance, option A standard and option B -- five times the salary. Appellant elected postretirement basic life insurance (PRBLI) option of "No Reduction." The commencing date for postretirement deductions was May 14, 2016. OPM indicated that basic and optional coverage premiums began on OWCP's commencing date of May 14, 2016. Attached to this letter was a FEGLI Continuation of Life Insurance Coverage form dated December 12, 2016. Appellant elected basic life insurance, standard optional insurance, and additional optional insurance five times her salary. Regarding basic life insurance, appellant checked a box marked "yes" that she wanted to have basic life insurance in retirement or while on compensation and she also checked a box marked "no" indicating that she wanted no reduction in her benefit.

In a periodic disability worksheet dated April 19, 2017, OWCP adjusted appellant's compensation payments, effective May 16, 2016. The FEGLI salary was changed to \$56,791.00 and the PRBLI at "No Reduction" option was added pursuant to the March 17, 2017 OPM notice.

In a preliminary overpayment determination dated April 20, 2017, OWCP advised appellant that she received an overpayment of compensation in the amount of \$1,387.01 because

---

<sup>2</sup> In a preliminary overpayment determination dated December 1, 2016, OWCP advised appellant that she received a \$224.11 overpayment of compensation because the employing establishment provided corrected earnings for the weekly FECA pay rate. In a memorandum dated January 9, 2017, OWCP determined that, due to the low amount of overpayment collection, the debt was administratively terminated.

PRBLI premiums had not been deducted from her compensation benefits for the period May 14, 2016 to April 1, 2017. It noted that on March 16, 2017 OPM provided a new final base salary on which his FEGLI was based of \$56,791.00 and noted two premiums appellant elected of optional life insurance code of X0 and PRBLI at “No Reduction” option. OPM advised that these premiums should have been deducted beginning May 14, 2016. OWCP indicated that the premiums, however, were not deducted which created an overpayment. Optional life insurance premiums should have been deducted at code “X0” based on the salary for FEGLI purposes of \$56,791.00 for the period May 14, 2016 to April 1, 2017. It advised that for the period May 14, 2016 to April 1, 2017, the following amounts were deducted from appellant’s compensation: basic life insurance of \$189.32; optional life insurance of \$442.46; and zero for PRBLI of “No Reduction” option, for total deductions of \$631.78. OWCP advised that, for the same period, the following amounts should have been deducted from appellant’s compensation: basic life insurance of \$204.18; optional life insurance of \$476.43; and PRBLI of \$1,338.18, for total deductions of \$2,018.79. It noted that this resulted in a \$1,387.01 overpayment of compensation. OWCP made a preliminary determination that appellant was without fault in the creation of the overpayment. It informed her that, if she believed the overpayment should be waived, she should complete an overpayment recovery questionnaire (Form OWCP-20) and submit detailed supporting financial documentation within 30 days. No additional information was received.

By decision dated May 22, 2017, OWCP determined that appellant received an overpayment of compensation in the amount of \$1,387.01 for the period May 14, 2016 to April 1, 2017. It found that she was without fault in the creation of the overpayment, but that waiver of recovery was denied, as appellant did not submit a completed overpayment recovery questionnaire and supporting financial documentation. As appellant failed to submit current income and expense information, it determined that waiver of recovery of the overpayment could not be granted. OWCP directed that \$250.00 be withheld from his continuing compensation payments in order to recover the overpayment.

**LEGAL PRECEDENT -- ISSUE 1**

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.<sup>3</sup> The coverage for basic life insurance is effective unless waived,<sup>4</sup> and premiums for basic and optional life coverage are withheld from the employee’s pay.<sup>5</sup> Upon retirement, 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>6</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>7</sup> but the

---

<sup>3</sup> 5 U.S.C. § 8702(a).

<sup>4</sup> *Id.* at § 8702(b).

<sup>5</sup> *Id.* at § 8707.

<sup>6</sup> *Id.* at § 8706.

<sup>7</sup> *Id.* at § 8707(b)(2).

employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.<sup>8</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 compensation, so that his 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 2 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 1 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>9</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>10</sup> 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.<sup>11</sup> When an under-withholding 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.<sup>12</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>13</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>14</sup>

---

<sup>8</sup> *Id.* at § 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>9</sup> See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>10</sup> 5 C.F.R. § 870.504(a)(1)

<sup>11</sup> *Id.* at § 504(b).

<sup>12</sup> 5 U.S.C. § 8707(d); see also *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>13</sup> *Id.* at § 8102(a).

<sup>14</sup> *Id.* at § 8129(a).

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

The Board finds that an overpayment of compensation in the amount of \$1,387.01 was created due to OWCP's failure to deduct premiums for PRBLI at "no reduction," failure to deduct optional life insurance premiums at code "X0," and failure to use the correct final salary for FEGLI purposes. OWCP explained how the overpayment occurred and provided this to appellant with the preliminary determination of overpayment.<sup>15</sup>

Appellant does not dispute that she received the overpayment in question, nor does she dispute the amount of the overpayment. Thus, the Board finds that OWCP properly determined the fact and the amount of overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>16</sup> These statutory guidelines are found in section 8129(b) of FECA which states: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."<sup>17</sup> When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

Section 10.436 of the implementing regulations<sup>18</sup> provide that recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics.<sup>19</sup> An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>20</sup>

---

<sup>15</sup> See *Sandra K. Neil*, 40 ECAB 924 (1989).

<sup>16</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>17</sup> 5 U.S.C. § 8129(b).

<sup>18</sup> 20 C.F.R. § 10.436.

<sup>19</sup> An individual's assets must exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. See *Robert F. Kenney*, 42 ECAB 297 (1991).

<sup>20</sup> See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

Section 10.437 provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>21</sup>

Section 10.438 of the regulations provide 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>22</sup>

### **ANALYSIS -- ISSUE 2**

OWCP determined that appellant was without fault in the creation of the overpayment. As such, it may only require recovery the overpayment if it would neither defeat the purpose of FECA nor be against equity and good conscience.

On April 20, 2017 OWCP requested that appellant complete an overpayment recovery questionnaire and provide supporting financial documentation, if she desired waiver of the overpayment in question. Appellant did not respond. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>23</sup>

Consequently, as appellant did not submit the financial information required by section 10.438 of OWCP's regulations,<sup>24</sup> which was necessary to determine eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>25</sup>

---

<sup>21</sup> 20 C.F.R. § 10.437.

<sup>22</sup> *Id.* at § 10.438

<sup>23</sup> *See id.* (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>24</sup> *Id.*

<sup>25</sup> *D.C.*, Docket No. 09-1460 (issued April 19, 2010).

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>26</sup> Section 10.441(a) of the regulations<sup>27</sup> provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>28</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under FECA. When, as in this case, an individual fails to provide requested information on income,<sup>29</sup> expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>30</sup> Appellant, as noted, did not provide any information for OWCP to consider in determining the amount to be withheld from her continuing compensation. The Board, therefore, finds that OWCP did not abuse its discretion in determining that the overpayment sum of \$1,387.01 would be recovered by deducting \$250.00 from appellant's continuing compensation payments.

On appeal appellant asserts that she was not at fault in the creation of the overpayment and notes that her health insurance was terminated, leaving her without medicine and medical care. She asserts that the employing establishment was trying to charge her for the insurance premiums, and she was filing a grievance over all the errors made in the handling of her claim. Appellant developed anxiety and financial hardship and requested forgiveness of the debt. As explained above, OWCP found appellant without fault in the creation of the overpayment. Because appellant did not provide a completed Form OWCP-20 overpayment recovery questionnaire and supporting financial documentation as requested in OWCP's April 20, 2017 letter, OWCP properly denied waiver of recovery of the overpayment.<sup>31</sup>

---

<sup>26</sup> *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>27</sup> 20 C.F.R. § 10.441(a).

<sup>28</sup> *Id.*

<sup>29</sup> *Supra* note 23.

<sup>30</sup> *Gail M. Roe*, 47 ECAB 268 (1995); *Robin D. Calhoun*, Docket No. 00-1756 (issued May 21, 2001).

<sup>31</sup> *See* 20 C.F.R. § 10.438 (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,387.01 for the period May 14, 2016 through April 1, 2017, properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2018  
Washington, DC

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

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

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