

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

R.B., Appellant)	
)	
and)	Docket No. 19-1561
)	Issued: March 29, 2021
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Charleston, WV, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 15, 2019 appellant filed a timely appeal from a June 13, 2019 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.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$25,660.70 for the period February 28, 2000 through March 30, 2019 for which he was

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 13, 2019 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." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

without fault because OWCP incorrectly deducted premiums for optional life insurance (OLI) and postretirement basic life insurance (PRBLI) from his wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$927.63 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On December 8, 1999 appellant, then a 53-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he experienced mental trauma while in the performance of duty. He stopped work on December 8, 1999. OWCP accepted the claim for an anxiety reaction. It subsequently expanded its acceptance of the claim to include post-traumatic stress disorder.

In a claim for compensation (Form CA-7) dated February 8, 2000, appellant requested wage-loss compensation beginning February 28, 2000. The employing establishment specified on the form that he earned \$26.07 per hour on December 9, 1999 and earned premium pay of \$5,440.70 per year. In Form CA-7s dated February 29, 2000 through March 13, 2001, it indicated that appellant's base pay of \$26.07 per hour as a Grade 11, Step 10.

OWCP paid appellant wage-loss compensation beginning February 28, 2000. It calculated his pay rate for compensation purposes using a date-of-injury pay rate and annual salary of \$54,408.00. OWCP deducted premiums for OLI, but did not deduct premiums for PRBLI until June 2, 2013.³

On March 14, 2018 the Office of Personnel Management (OPM) advised that appellant had elected PRBLI with no reduction effective June 30, 2001 and that his final base salary for Federal Employees' Group Life Insurance (FEGLI) coverage was \$62,481.00. It further indicated that he had elected Option A; Option B, with three multiples and no reduction; and Option C, with two multiples and no reduction. OPM asserted that appellant should be charged for Option C, with one multiple and no reduction from June 2, 2013 to the present, noting that he "was not given the opportunity to elect no reduction at age 65." It advised that BLI and OLI coverage premiums "begin on the OWCP commencing date" and that the commencing date for PRBLI premiums was June 30, 2001.

With the March 14, 2018 letter, OPM provided a FEGLI continuation of life insurance coverage form for a retiree or compensationner signed by appellant on April 28, 2001. Appellant elected PRBLI with no reduction and OLI. In a Life Insurance Election form also dated April 28, 2001, he elected basic life insurance (BLI) and OLI with Option A, Option B at three times his pay, and Option C with two multiples. The form indicated that, "This election supersedes all previous elections."

³ In a letter dated June 1, 2011, OWCP requested that appellant indicate whether he wanted to continue deductions for premiums from OLI after he reached age 65.

In a letter dated February 1, 2019, OPM again indicated that appellant had elected PRBLI with a commencing date of June 30, 2001 and questioned why OWCP was not withholding premiums from his compensation.

In a March 27, 2019 payment plate, OWCP noted that OPM had advised that appellant had elected PRBLI with no reduction and OLI with a base salary of \$62,481.00.

On May 9, 2019 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$25,660.70 from February 28, 2000 through March 30, 2019. It indicated that it had deducted premiums for OLI and PRBLI based on an incorrect yearly salary. OWCP noted that appellant's salary for FEGLI purposes was \$62,481.00 from February 28, 2000 through March 30, 2019, but that it had deducted premiums based on a yearly salary of \$55,000.00. It also advised that it had incorrectly deducted premiums for PRBLI. OWCP calculated the amount that it had deducted for BLI and OLI premiums from February 28, 2000 through March 30, 2019, \$51,654.44, and subtracted this amount from \$56,944.14, the amount that it should have deducted, to find an overpayment of \$5,289.70. It then subtracted the amount that it had deducted for PRBLI premiums from June 30, 2001 through March 30, 2019, \$8,525.34, from the amount that it should have deducted, \$28,896.39, to find a \$20,371.00 overpayment of compensation. OWCP added the overpayment created by its failure to properly deduct premiums for OLI to the overpayment created by its failure to properly deduct premiums for PRBLI to find a total overpayment of \$25,660.70. It further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In an undated statement received May 28, 2019, appellant requested waiver of the overpayment. He asserted that attempting to repay the overpayment would result in significant financial hardship.

By decision dated June 13, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$25,660.70 for the period February 28, 2000 through March 30, 2019 because it had incorrectly deducted life insurance premiums from his wage-loss compensation. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery, noting that he had not submitted any financial information. OWCP required recover the overpayment by deducting \$927.63 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

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 his or her duty.⁴ When an overpayment has been made to an individual because of an error of fact or law,

⁴ 5 U.S.C. § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁵

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁶ The coverage for BLI is effective unless waived,⁷ and premiums for basic and optional life coverage are withheld from the employee's pay.⁸

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 his or her 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).⁹

When an underwithholding 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation because OWCP failed to adequately deduct premiums for PRBLI during the period June 30, 2001 through March 30, 2019 and; accordingly, fact of overpayment has been established. OPM notified OWCP that he had elected PRBLI coverage with no reduction, effective June 30, 2001, and provided documentation supporting the election. OWCP, however, did not deduct premiums for PRBLI from appellant's wage-loss compensation until June 2013; consequently, he received an overpayment of compensation.¹¹

⁵ *Id.* at § 8129(a).

⁶ 5 U.S.C. § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18, 1124 (issued January 16, 2019).

¹⁰ 5 U.S.C. § 8707(d); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹¹ *See I.J.*, Docket No. 19-1672 (issued March 10, 2020).

The Board finds, however, that the case is not in posture for decision regarding the amount and period of the overpayment or whether appellant received an overpayment of compensation because OWCP failed to properly deduct premiums for OLI from his compensation.

OWCP found that appellant had received an overpayment of compensation for the period February 28, 2000 to March 30, 2019 because it had deducted premiums for OLI based on an inaccurate salary. It further found that it had either deducted premiums for PRBLI based on an inaccurate salary or failed to deduct PRBLI premiums from June 30, 2001 through March 30, 2019. OWCP found that appellant's life insurance premiums should have been premised on an annual salary of \$62,481.00 rather than an annual salary of \$55,000.00. The record, however, lacks sufficient information substantiating that he had an annual salary of \$62,481.00. The employing establishment advised that appellant earned \$26.07 per hour as a Grade 11, Step 10, or \$54,226.00 per year. In one CA-7 form, it indicated that he earned premium pay of \$5,440.70 per year; however, the remaining CA-7 forms indicate that he earned \$26.07 per year, but do not list any premium pay.

Due to the lack of financial information setting forth appellant's annual salary for the period February 28, 2000 to March 30, 2019, the Board is unable to adequately review the amount of the overpayment in this case.¹² Additionally, a claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹³ OWCP, however, while listing the amounts that it should have deducted for PRBLI and OLI for each period, did not sufficiently explain how it determined the amount to be deducted. It is further unclear from its decision whether, in accordance with OPM's instructions in its March 14, 2018 letter, it had calculated the premiums to be deducted for Option C as one multiple and no reduction, effective June 2, 2013 to the present, rather than the selected Option C, with two multiples.

On remand OWCP shall confirm appellant's annual salary for FEGLI purposes during the period of the overpayment, and calculate the resulting amount and period of the overpayment of compensation. It should then issue a new preliminary overpayment determination providing a detailed description of its overpayment calculation, together with an appropriate overpayment action request form, a Form OWCP-20, and instructions for him to provide supporting financial information. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation for which he was without fault. The Board further finds, however, that the case is not in posture for decision regarding the period and amount of the overpayment.

¹² See *B.W.*, Docket No. 19-0126 (issued December 9, 2019).

¹³ *B.W., id.*; see also *O.R.*, 59 ECAB 432 (2008).

¹⁴ In light of the Board's disposition regarding the period and amount of the overpayment, the issues of waiver and recovery of the overpayment are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 29, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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