

FACTUAL HISTORY

On July 13, 2012 appellant, then a 49-year-old maintenance employee, filed an occupational disease claim (Form CA-2) alleging that he injured his elbow due to factors of his federal employment, including climbing or crawling in very tight spaces while he repaired an air conditioner.² He noted that he first became aware of his condition on June 28, 2012 and realized its relationship to his federal employment on the filing date of his claim. Appellant also stopped work on July 13, 2012. On August 8, 2012 OWCP accepted the claim for left olecranon bursitis. It later expanded the acceptance of the claim to include right olecranon bursitis and right lateral epicondylitis. OWCP paid appellant wage-loss compensation benefits on the supplemental rolls as of August 13, 2012 and on the periodic rolls as of October 21, 2012. Appellant returned to work in a modified position as a building equipment mechanic on January 3, 2019. He stopped work on January 4, 2019 and claimed compensation for total disability in his prior claim under OWCP File No. xxxxxx905. OWCP subsequently resumed payment of wage-loss compensation benefits for temporary total disability on the periodic rolls beginning January 6, 2019.

A Federal Employees' Group Life Insurance (FEGLI) life insurance election form appellant signed on November 5, 1990 reflects that appellant elected basic life insurance. A claim for compensation (Form CA-7) dated August 27, 2012 indicated by check mark that appellant had basic life insurance coverage, and no optional life insurance.

On May 29, 2019 the Office of Personnel Management (OPM) informed OWCP that as a compensation appellant was eligible to continue FEGLI coverage. It further notified OWCP that appellant had elected Code CO basic life insurance (BLI) with no reduction. Appellant had also had elected PRBLI with no reduction, commencing January 4, 2019. OPM requested OWCP to make deductions for BLI and PRBLI based on appellant's base salary of \$65,447.00. OWCP received a FEGLI continuation of life insurance coverage form appellant signed on April 10, 2019 in which he indicated that he wanted to continue BLI coverage, with no reduction during retirement/compensation.

On June 3, 2019 OWCP adjusted appellant's life insurance deductions based on OPM's May 29, 2019 letter. On July 23, 2019 it refunded appellant \$308.20 for termination of BLI deductions and no PRBLI deductions for the period May 26 through July 20, 2019.

In an October 21, 2019 letter, OWCP notified appellant that it had incorrectly terminated BLI and PRBLI deductions and erroneously issued a refund, which caused an underdeduction of life insurance premiums and an overpayment of compensation for the period January 4 through October 12, 2019. It advised him that it was making deductions for health insurance benefits and BLI and PRBLI premiums from his wage-loss compensation payments, effective October 13, 2019. OWCP requested that appellant notify it immediately if he had benefits such as optional life insurance (OLI) that it was not deducting from his wage-loss compensation.

² OWCP assigned the present claim OWCP File No. xxxxxx419. Appellant has a prior claim for an occupational disease assigned OWCP File No. xxxxxx905. OWCP accepted the claim for lumbar sprain and aggravation of lumbar stenosis and aggravation of lumbar degenerative disc disease. It has administratively combined appellant's claims, with OWCP File No. xxxxxx419 serving as the master file.

In a November 18, 2019 letter, OPM again informed OWCP that as a compensation appellant was eligible to continue FEGLI coverage. It further notified OWCP that appellant had elected to change his Code CO BLI to Code AO, cancelling all of his life insurance coverage, effective November 1, 2019, based on an accompanying Continuation of Life Insurance Coverage as an annuitant or compensation under FEGLI Program (SF 2818) signed on October 21, 2019. OPM indicated that the commencement date for PRBLI was August 24, 2013. It noted that appellant's base salary was \$58,268.00. OWCP received a FEGLI continuation of life insurance coverage form appellant signed on October 20, 2019 cancelling his life insurance coverage.

In a preliminary overpayment determination dated January 10, 2020, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$9,453.13 because PRBLI premiums had not been properly deducted from his FECA compensation and a refund was erroneously issued for PRBLI premiums paid for the period August 13, 2012 through November 9, 2019.³ It further advised him of its preliminary determination that he was at fault in the creation of the overpayment because he made an incorrect statement as to a material fact that he knew or should have known was incorrect. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified him 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 precoupment hearing.

A January 10, 2020 overpayment worksheet indicated that for the period August 13, 2012 to November 9, 2019, premiums for PRBLI had not been deducted from appellant's FECA compensation and a refund was erroneously issued for PRBLI premiums paid, totaling \$9,453.13.

On February 5, 2020 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review. He submitted exhibits outlining his contact with the employing establishment, OPM, and OWCP regarding his election of BLI and PRBLI benefits and the premiums he paid for such benefits. A February 5, 2014 letter from OPM indicated that appellant had elected Code C0 BLI and PRBLI with no reduction. OPM noted that the commencement date for the deduction of PRBLI premiums was August 24, 2013. It requested that OWCP make deductions for BLI and PRBLI based on appellant's base salary of \$58,268.00. In a February 5, 2020 letter, appellant alleged that he informed human resources in 2012 that he did not want any life insurance coverage, if there were going to be any charges, because he was single and did not have any beneficiaries. A partial document explained FEGLI coverage for employees receiving workers' compensation. It noted that if the employee became entitled to benefits from OWCP for a job-related injury which prevented work, FEGLI coverage would continue as an employee at no cost for up to 12 months of non-pay status. At the end of 12 months of non-pay status, if eligible to continue coverage, and if the employee did not covert coverage, withholdings would be made from the compensation payment as if the employee were retired.

During the telephonic hearing held on May 27, 2020, appellant testified that, he did not have life insurance for the stated overpayment period as he was forced to cancel his life insurance. He explained his contact with the employing establishment, OPM, and OWCP regarding his

³ OWCP, in its January 10, 2020 preliminary overpayment determination, noted that an overpayment in the amount of \$105.39 due to its failure to deduct BLI premiums from appellant's wage-loss compensation for the period August 13, 2012 through November 9, 2019 was not included in the \$9,453.13 overpayment.

election of BLI and PRBLI benefits and the premiums he paid for such benefits. Appellant questioned why his premium of \$18.00 for BLI was raised to \$154.00 in May 25, 2019.

Following the hearing, appellant submitted a June 22, 2020 letter in which he continued to disagree with the fact of overpayment. He also requested waiver of recovery of the overpayment because he was found without fault in the creation of the overpayment.

By decision dated August 4, 2020, the hearing representative set aside the January 10, 2020 preliminary overpayment determination and remanded the case to OWCP to determine the exact period that the claimant was enrolled in basic life and post-retirement basic life, the correct effective date for no reduction, and the appropriate salary amount. Then it instructed OWCP to determine the fact and amount of overpayment, and whether appellant was at fault in creation of the overpayment.

On September 18, 2020 OWCP issued a new preliminary overpayment determination, notifying appellant that he had been overpaid in the amount of \$9,594.73 because PRBLI premiums were not properly deducted from his FECA compensation and a refund was erroneously issued for PRBLI premiums paid for the period August 23, 2013 through October 31, 2019.⁴ It noted that its prior January 10, 2020 overpayment worksheet had been corrected to reflect the above-noted amount and period of the overpayment. OWCP also made a preliminary overpayment determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and a Form OWCP-20.

On October 9, 2020 appellant completed an overpayment action request form, requesting waiver of recovery of the overpayment.

In a June 3, 2021 decision, OWCP finalized its preliminary overpayment determination, finding that appellant had received a \$9,594.73 overpayment of compensation from August 23, 2013 through October 31, 2019 because it did not make proper deductions for PRBLI premiums from his FECA compensation payments. It further determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁵ The coverage for BLI is effective unless waived,⁶ and premiums for basic and optional life coverage are withheld from the employee's

⁴ OWCP noted in its September 18, 2020 preliminary overpayment determination that an overpayment in the amount of \$105.39 due to its failure to deduct BLI premiums from appellant's wage-loss compensation during the period August 13, 2012 through November 9, 2019 was not included in the \$9,594.73 overpayment.

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

pay.⁷ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁸ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹⁰

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 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).¹¹ 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.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation, for which he was without fault, because OWCP failed to deduct PRBLI premiums from his FECA wage-loss compensation.

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ *Id.* at § 8707(b)(2).

¹⁰ *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

¹¹ *See I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 U.S.C. § 8707(d); *see also B.B.*, *supra* note 10.

¹³ *Id.* at § 8102(a).

¹⁴ *Id.* at § 8129(a).

OPM notified OWCP that appellant had elected PRBLI coverage effective August 24, 2013. OWCP, however, did not deduct the proper amounts of premiums for PRBLI from appellant's wage-loss compensation benefits for the period through October 31, 2019. It calculated the amount of the resulting overpayment as \$9,594.73. The record contains appellant's November 5, 1990 FEGLI election form in which he elected the option for BLI and an April 10, 2019 FEGLI continuation of life insurance coverage form wherein appellant elected BLI with no reduction. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he or she had selected.¹⁵ Moreover, as noted, 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.¹⁶ Thus, the Board finds that fact of overpayment has been established.

The Board further finds, however, that this case is not in posture for decision with regard to the period and the amount of the overpayment. In the September 18, 2020 preliminary overpayment determination, OWCP determined the overpayment of compensation to be \$9,594.73 for the period August 23, 2013 through October 31, 2019 because OWCP failed to deduct the proper amounts of premiums for PRBLI and improperly refunded him for its deduction of PRBLI premiums from his wage-loss compensation benefits. However, in letters dated February 5, 2014 and November 18, 2019, OPM indicated that the commencement date for appellant's election of PRBLI benefits was August 24, 2013.

OWCP did not adequately explain the amount of the overpayment in this case, as it found an overpayment beginning August 23, 2013 despite the evidence of record from OPM indicating that appellant elected PRBLI benefits commencing August 24, 2013. The Board notes that the record does not actually contain an election form dated either August 23, or 24, 2014. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹⁷ The Board, therefore, finds that OWCP has not established the period and amount of the overpayment in question.

The case will therefore be remanded to OWCP for recalculation of the period and amount of the overpayment. Following this and such other further development as deemed necessary, OWCP shall issue a new preliminary determination of overpayment and a *de novo* overpayment decision.¹⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which he was without fault, because OWCP failed to deduct PRBLI

¹⁵ 5 C.F.R. § 870.504(b); *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

¹⁶ 5 U.S.C. § 8102.

¹⁷ *See D.D.*, Docket No. 20-1172 (issued September 29, 2021); *L.C.*, Docket No. 20-1058 (issued June 21, 2021).

¹⁸ *Id.*

premiums from his FECA wage-loss compensation. The Board further finds, however, that this case is not in posture for decision regarding the period and amount of the overpayment.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2021 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: January 28, 2022
Washington, DC

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

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

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

¹⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.