



Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation, in the amount of \$129,922.53, for which he was without fault, for the period September 1, 1999 through December 17, 2019 because optional life insurance (OLI) premiums were underwithheld from his FECA compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$1,846.15 every 28 days from appellant's continuing compensation benefits.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>5</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 17, 1989 appellant, then a 54-year-old senior criminal investigator, filed an occupational disease claim (Form CA-2) alleging that his heart condition was caused or aggravated by the stressful demands of his job. He stopped work on December 16, 1988. OWCP accepted the claim for anteroseptal myocardial infarction and paid appellant wage-loss compensation on the periodic compensation rolls, effective June 16, 2002.

In a November 29, 1999 letter, the Office of Personnel Management (OPM) noted that, per appellant's request, it froze his Option B OLI coverage under the Federal Employees' Group Life Insurance (FEGLI) effective September 1, 1999. Included with the letter was a November 5, 1999 form letter signed by appellant, which inquired about his life insurance coverage under FEGLI, and a November 29, 1999 copy of the computation of his FEGLI coverage, which noted that Option B – additional life insurance coverage was frozen at \$112,000.00, the amount of insurance before reduction.<sup>6</sup> A copy of appellant's election form was not received.

In a letter dated June 18, 2008, OWCP indicated that appellant's annual salary was \$58,000.00 for the purpose of calculating life insurance premiums. It explained how appellant's

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that following the March 12, 2021 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.*

<sup>5</sup> Docket No. 06-1840 (issued May 9, 2007).

<sup>6</sup> Appellant's final base salary was listed as \$58,000.00. His post-retirement basic life insurance (PRBLI) was no reduction zero percent. His OLI was Option B, 2 times no reduction, and Option C, 1 time with full reduction.

Option B OLI premium, which it manually processed in its data system, was calculated to be set at \$156.80 every 28 days.

In a December 18, 2019 letter, OWCP indicated that appellant's net compensation every 28 days was \$4,881.94, which included OLI premium deduction Code M1 of \$156.80. A copy of appellant's compensation payment history from December 13, 2015 through December 7, 2019 was included, which noted miscellaneous deductions, the category under which OLI Code M1 would be, totaled \$8,153.60 at the rate of \$156.80 every periodic payment.

In a separate letter of even date, OWCP indicated that appellant's correct net compensation received every 28 days was \$4,422.33, which included an OLI deduction Code M1 of \$612.48. It advised that additional information on the updated OLI deduction would be provided as it had not been calculated with the appropriate increases every five years as of appellant's birth month.

In a December 18, 2019 manual adjustment form, OWCP indicated that, for the period September 1, 1999 through December 7, 2019, appellant had premiums deducted totaling \$71,883.25, but should have had deductions totaling \$201,805.78, which resulted in an overpayment of \$129,922.53. Separate worksheets were provided. One worksheet noted post-age 65 deduction period for Option B multiples of 2 with no reduction from September 1, 1999 through December 7, 2019 and a total premium of \$201,805.78. This worksheet did not provide a complete summary of rates and deductions that should have been made from September 1, 1999 through December 7, 2019. A miscellaneous deduction worksheet noted Option B Freeze Withholding rate from March 3, 2019 was \$156.80. A deductions/net summary worksheet noted a gross compensation amount of \$5,449.00 and a net amount of \$4,881.94, following withholding of premiums for health benefits insurance (HBI) of \$296.22, post-retirement basic life insurance (PRBLI) of \$114.04, and miscellaneous deductions of \$156.80.

On February 4, 2020 OWCP notified appellant of its preliminary overpayment determination that he received an overpayment of compensation for which he was without fault, in the amount of \$129,922.53 for the period September 1, 1999 through December 7, 2019 because his OLI premiums for Code M1 were frozen for a significant period of time. It explained that, while it continued to deduct \$156.80 every 28 days during that period, the premium deductions should have increased as he got older. OWCP noted that an increase in premiums was not applied to his FECA compensation each time there was an increase in the premium, and that the premiums due had increased significantly after 1999. It advised that the current premium for his OLI Code M1 was \$612.48 every 28 days. OWCP provided calculation that the difference of the \$71,883.25 withheld for Code M1 when OLI was frozen in 1999 and the \$201,805.78, which should have been withheld for Code M1, resulted in a total overpayment of \$129,922.53. It forwarded an overpayment recovery questionnaire (Form OWCP-20). OWCP requested that he complete the questionnaire and provide supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support his reported income and expenses. It advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. OWCP provided an overpayment action request form and further notified him that, within 30 days of the date of the letter, appellant could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On February 15, 2020 appellant requested a prerecoupment hearing on the issues of a possible waiver of recovery of the overpayment with OWCP's Branch of Hearings and Review. In an attached Form OWCP-20 dated January 15, 2020, he reported a total monthly income for his household of \$5,219.11<sup>7</sup> and recurring monthly expenses of \$3,227.81.<sup>8</sup> Appellant noted that he had over \$5,500.00 in a checking account and \$52,258.69 in a savings account. Supporting financial documentation of the mortgage expense was provided; no other income or expenses were received.

A telephonic hearing was held on September 8, 2020. OWCP's hearing representative explained that the incorrect premiums for Option B OLI Code M1 were withheld, which resulted in no age-based changes to the premiums, which had increased and should have been applied every five years as appellant aged. Appellant's wife summarized the monthly household income and expenses, noting that \$10,000.00 was owed on a bathroom remodel for which they paid \$131.70 a month. The hearing representative noted that, since there was over \$2,400.00 available in funds each month, she proposed a voluntary repayment plan of \$2,000.00 monthly or \$1,846.15 per 28 days, to which appellant and his wife agreed. The hearing representative further instructed appellant that if he wished to withdraw from the voluntary repayment plan, then he needed to submit documented household finances so a repayment plan based on the financials could be done. The record was held open for 30 days for the submission of additional evidence. No additional response from appellant or additional evidence was received.

By decision dated October 14, 2020, OWCP's hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$129,922.53 for the period September 1, 1999 through December 7, 2019, due to underdeduction of OLI premiums. The hearing representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery would defeat the purpose of FECA or would be against equity and good conscience. In assessing a repayment schedule, the hearing representative required recovery of the overpayment by deducting \$1,846.15 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8129(a) of 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>9</sup> When an overpayment has been made to an individual because of an error

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<sup>7</sup> This included a monthly income of \$4,407.51 and Social Security Administration benefits of \$811.60, for a total of \$5,219.11.

<sup>8</sup> This included \$1,915.57 for mortgage, \$460.00 for food, \$200.00 for clothing, \$452.24 for utilities, and \$200.00 for miscellaneous household expenses and medical, dental, and transportation expenses.

<sup>9</sup> 5 U.S.C. § 8129.

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>10</sup>

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>11</sup> The coverage for basic life insurance is effective unless waived,<sup>12</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>13</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>14</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>15</sup> However, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his or her compensation.<sup>16</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 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).<sup>17</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

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<sup>10</sup> 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

<sup>11</sup> 5 U.S.C. § 8702(a).

<sup>12</sup> *Id.* at § 8702(b).

<sup>13</sup> *Id.* at § 8707.

<sup>14</sup> *Id.* at § 8706.

<sup>15</sup> *Id.* at § 8707(b)(2).

<sup>16</sup> *Id.* at § 8706(b)(3)(B). See *S.P.*, Docket No. 17-1888 (issued July 18, 2018); *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected PRBLI 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 of compensation was created due to no deduction of premiums for OLI for the period July 1983 through November 1989).

<sup>17</sup> See *S.P., id.*; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

employment, he or she filed an election or waiver that remains in effect.<sup>18</sup> An 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>19</sup> 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.<sup>20</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$129,922.53 for the period September 1, 1999 through December 17, 2019 for which he was without fault.

OWCP found that an overpayment of compensation in the amount of \$129,922.53 was created because OLI premiums were underwithheld from his FECA compensation for the period September 1, 1999 through December 17, 2019.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received a \$129,922.53 overpayment due to its failure to properly deduct premiums for Option B OLI. While the record includes communications from OPM regarding appellant's OLI coverage, the record does not contain evidence establishing that appellant affirmatively signed a document electing Option B OLI coverage. The record does not contain a signed election form showing which coverage he actually selected or if he actually selected coverage. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement in order to establish the fact of overpayment of compensation.<sup>21</sup> As OWCP has not factually established appellant's election of OLI on the relevant dates, it has not met its burden of proof to establish that a \$129,922.53 overpayment was created for the period September 1, 1999 through December 17, 2019 as alleged.<sup>22</sup>

The Board, therefore, finds that OWCP did not meet its burden of proof to establish that an overpayment of compensation occurred.<sup>23</sup>

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<sup>18</sup> 5 C.F.R. § 870.504(a)(1).

<sup>19</sup> *Id.* at § 870.504(b).

<sup>20</sup> 5 U.S.C. § 8707(d); *see also V.H.*, Docket No. 18-1124 (issued January 16, 2019); *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>21</sup> *J.P. (J.P.)*, Docket No. 18-1194 (issued April 28, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F., (E.S.)*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

<sup>22</sup> *J.P. (J.P.)*, *id.*; *R.F. (E.S.)*, *id.*

<sup>23</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

**CONCLUSION**

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$129,992.53 for the September 1, 1999 through December 17, 2019.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 14, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 21, 2022  
Washington, DC

Alec J. Koromilas, 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