

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

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<b>L.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1674</b>
	)	<b>Issued: August 8, 2023</b>
<b>ENVIRONMENTAL PROTECTION AGENCY,</b>	)	
<b>REGION II, Edison, NJ, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 28, 2020 appellant filed a timely appeal from a September 1, 2020 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,863.13, for which he was without fault, for the period January 7, 2018 through January 28, 2019 because OWCP failed to deduct optional life

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

<sup>2</sup> The Board notes that, following the September 1, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

insurance (OLI) premiums from his FECA wage-loss compensation; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$1,092.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On April 28, 1999 appellant then a 51-year-old environmental specialist, filed an occupational disease claim (Form CA-2) alleging that he developed neuropathic pain in both hands and wrists due to factors of his federal employment. He noted that he first became aware of his condition on April 1, 1999, and realized its relation to his federal employment on April 13, 1999. Appellant stopped work on April 22, 1999. OWCP accepted his claim under OWCP File No. xxxxxx371 for bilateral carpal tunnel syndrome.<sup>3</sup> Appellant underwent OWCP-authorized right carpal tunnel release on January 18, 1999 and left carpal tunnel release on February 19, 1999.

In a letter dated July 6, 1999, OWCP placed appellant on the periodic compensation rolls, effective June 20, 1999. The letter indicated that deductions from the regular payments were being made for OLI in the amount of \$120.80. OWCP advised appellant that, if he had OLI or health insurance benefits coverage, and no deduction was made that he should contact OWCP as he was responsible for those premiums.

On November 1, 2000 the employing establishment removed appellant effective November 17, 2000 for an inability to perform the duties of his position.

In a notice to claimant dated January 24, 2012, OWCP informed appellant that he would reach 65 years of age as of December 28, 2012. It indicated that previously all deductions for OLI automatically stopped when an OWCP claimant reached age 65, and coverage terminated shortly thereafter. However, under current legislation he had the option of continuing Option B and Option C life insurance beyond age 65, known as "Post-65 Reduction Election," and was open to all claimants who currently have Option B or Option C life insurance coverage. OWCP sent a similar letter to appellant on September 21, 2012.

In a letter dated July 17, 2012, appellant informed OWCP of his change of address and enclosed a form to reduce his life insurance coverage. He submitted a life insurance election form (Standard Form 2817) dated July 17, 2012 and indicated that he elected Option B -- additional life insurance at one times his pay.

On August 15, 2012 OWCP acknowledged receipt of his new address and request for reduction in life insurance coverage. It noted that all requests for change or cancellation of life insurance must be sent in writing to the Office of Personnel Management (OPM) and provided an address.

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<sup>3</sup> Appellant filed a claim for a work-related injury on February 13, 1998, which was accepted by OWCP for right epicondylitis and bilateral carpal tunnel syndrome under OWCP File No. xxxxxx885. On June 16, 1999 OWCP indicated that OWCP File No. xxxxxx371 was filed for the same conditions accepted under OWCP File No. xxxxxx885. It combined these claims and noted that OWCP File No. xxxxxx371 was designated as the master file.

In a letter dated February 21, 2019, OWCP outlined appellant's entitlement to compensation benefits on the periodic rolls. The letter indicated that deductions from the regular payments were being made for OLI in the amount of \$641.26 every 28 days beginning with the period February 3 through March 2, 2019. OWCP advised appellant that, if he had OLI or health insurance benefits coverage, and no deduction was made that he should contact OWCP as he was responsible for those premiums.

In a February 28, 2019, OWCP supplemental rolls payment worksheet, OWCP advised that an overpayment of compensation had occurred and the amount of the overpayment was calculated based on life insurance premiums not being deducted from appellant's monthly compensation checks from January 7, 2018 through January 28, 2019. It calculated the overpayment by taking the amount of compensation he was paid during this period, \$75,614.82, and subtracting this from the correct amount of compensation, which he should have been paid, \$65,063.16, for a total overpayment of \$8,863.13.

In a letter dated March 4, 2019, OWCP indicated that if appellant had cancelled life insurance, to submit proof with the effective date of cancellation.

On March 7, 2019 OWCP issued a preliminary overpayment determination that an overpayment of compensation had occurred in the amount of \$8,863.13 from January 7, 2018 through January 28, 2019. It noted that the overpayment had occurred because appellant's premiums had not been deducted for the OLI beginning January 7, 2018. OWCP noted that it took action to update appellant's health insurance coverage due to an open enrollment change, but failed to input the applicable OLI deduction. Appellant had been overpaid for the period January 7, 2018 through January 28, 2019 in the amount of \$8,863.13. OWCP found appellant without fault in the creation of the overpayment. It advised him that he could submit evidence challenging the fact or amount of the overpayment. OWCP instructed appellant to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule would be formulated. It informed him that he should provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP provided an overpayment action request form and notified appellant, that within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoumment hearing.

On March 18, 2019 appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. He completed the Form OWCP-20 and stated that he had a total monthly household income of \$10,572.00 and monthly expenses totaling \$2,425.00. Appellant submitted tax returns from 2018 and bank statements.

In a statement dated March 18, 2019, appellant disagreed with OWCP's preliminary overpayment determination. He indicated that after he turned 65 his life insurance premium substantially increased. Appellant reported receiving correspondence "OPM Post 65 Reductions in the Amount of Insurance," which stated that if he was eligible to continue basic life insurance as an annuitant or compensationner, he must choose the amount of basic life insurance he wanted to continue after age 65. He indicated that Option A, Option B, and Option C insurance were only

available to people with basic insurance. Appellant further indicated that he did not respond to the letter and believed he therefore cancelled the insurance.

On March 19, 2019 appellant indicated that OWCP stopped deducting life insurance premiums out of his disability check when he turned 70. He contacted OWCP and explained that he thought he cancelled his life insurance when he did not return the form and was informed that he could still purchase OLI. Appellant asserted that he did not submit the required documents to continue life insurance after age 65.

On March 29, 2019 OWCP requested OPM provide information about appellant's postretirement life insurance election. It indicated that in a life insurance election form dated July 17, 2012 he elected Option B, one times his pay.

In letters dated April 13 and 20, 2019, appellant indicated that he did not have documentation that he cancelled his Federal Employees' Group Life Insurance (FEGLI). He indicated that OWCP mailed him a Standard Form 2818 if he chose to continue life insurance after age 65. Appellant assumed that not signing the Standard Form 2818 would cancel his life insurance. He noted that OWCP continued to deduct life insurance premiums from his disability check until he turned 70. Due to his eroding health condition, appellant did not ask OWCP to stop deducting life insurance premiums.

In an Option C Election Form dated June 6, 2019, appellant cancelled Option C life insurance.

In a letter dated June 18, 2019, OPM instructed OWCP to cancel Option B-5X no reduction and also Option C-1X no reduction pursuant to the election freeze forms submitted by appellant. OPM requested the FEGLI code change from Y1 to C0 effective July 1, 2019. The final base salary on which FEGLI was based was \$68,420.00. It noted the commencing date for the postretirement deductions was November 18, 2000.

The precoupment hearing was held on July 12, 2019. Appellant advised that Standard Form 2818 was the official form and instructions for compensationers to elect how much life insurance they want to retain after age 65 and is titled "Continuation of Life Insurance Coverage as an Annuitant or Compensationers, Federal Employees' Group Life Insurance Program." Appellant indicated that compensationers who did not submit the Standard Form 2818 by their 65<sup>th</sup> birthday have full reduction in their life insurance and pay no life insurance premiums the first day of the month after they turned 65. He noted that he did not submit a Standard Form 2818 and failure to make an election of life insurance coverage was considered an election of full reduction for all multiples of that option.

By decision dated September 20, 2019, an OWCP hearing representative vacated the preliminary overpayment determination dated March 7, 2019 and remanded the case for further development. He instructed OWCP to contact OPM and request a copy of the Standard Form 2818 submitted by appellant or a definitive statement indicating that appellant did not complete such document prior to or within 60 days of reaching age 65.

In letters dated September 23 and October 24, 2019, OWCP requested that OPM provide a copy of the Standard Form 2818 submitted to OPM within 60 days of appellant's 65<sup>th</sup> birthday

or provide a definitive statement on OPM letterhead indicating that the employee did not complete and return the Standard Form 2818 within 60 days of reaching his 65<sup>th</sup> birthday.

In a letter dated January 13, 2020, OPM indicated that it did not receive a Standard Form 2818 from appellant within 60 days of reaching his 65<sup>th</sup> birthday.

On January 17, 2020 OWCP issued a preliminary overpayment determination finding that appellant had been overpaid in the amount of \$8,863.13, because OLI premiums were not deducted from January 7, 2018 through January 28, 2019. It found that he was without fault in the creation of the overpayment. OWCP advised appellant that he could submit evidence challenging the fact or amount of the overpayment. It instructed him to complete a Form OWCP-20 to determine whether waiver should be granted, and if not, a reasonable repayment schedule would be formulated. OWCP informed appellant that he should provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It provided an overpayment action request form and notified him, that within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing. In a letter dated February 4, 2020, appellant disagreed with the preliminary overpayment determination. He asserted that he did not submit the Standard Form 2818 election form within 60 days of his 65<sup>th</sup> birthday and in the absence of such election his life insurance would be deemed waived.

In an overpayment action request form dated February 9, 2020, appellant requested a prerecoupment hearing. He submitted a Form OWCP-20 dated February 9, 2020 and stated that he had a total monthly household income of \$10,991.00, including \$5,332.00 in OWCP benefits, \$2,251.00 in Social Security Administration (SSA) benefits and \$3,408.00 in other pension benefits. Appellant listed his monthly expenses of \$1,420.00 for mortgages, \$300.00 for groceries, \$200.00 for clothing, \$300.00 for utilities and insurance, \$300.00 for other miscellaneous expenses and a monthly installment debt of \$387.00 for an automobile. He listed two residential properties with a total mortgage balance of \$525,000.00. Appellant reported \$300.00 cash on hand, checking account balance of \$18,262.00, savings account balance of \$1,922.00, and stocks and bonds of \$160,000.00. The prerecoupment hearing occurred on June 16, 2020. Appellant provided an online bank statement for January and February 2020 transactions. The bank statement indicated payments for water utilities of \$19.21, energy utilities of \$52.59 and \$105.28, homeowner's association fees of \$273.66, and credit card payments of \$2,582.02.

In correspondence dated June 26, July 3 and July 12, 2020, appellant reiterated that he did not submit Standard Form 2818 within 60 days of his 65<sup>th</sup> birthday and in the absence of such election his life insurance would be deemed waived, and he would not be entitled to that type of life insurance. He cited to the Board's holding in *L.W.*<sup>4</sup> and asserted that his claim was factually the same.

By decision dated September 1, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of

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<sup>4</sup> Docket No. 15-1170 (issued March 10, 2016) (the Board remanded the case to OWCP for further development because the evidence had not established the basis for the optional postretirement life insurance premiums as the signed form was not in the record).

compensation in the amount of \$8,863.13 for the period January 7, 2018 through January 29, 2019, because OLI premiums were not deducted. She further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. In addressing appellant's argument with regard to not submitting a Standard Form 2818, the hearing representative referenced the instructions for Standard Form 2818, which state that if you do not complete the form, you will have default coverage. She required recovery of the overpayment by deducting \$1,092.00 from appellant's continuing compensation payments every 28 days.

### **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 duty.<sup>5</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>6</sup>

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and one or more of the options.<sup>7</sup> The coverage for BLI is effective unless waived<sup>8</sup> and premiums for BLI and OLI coverage are withheld from the employee's pay.<sup>9</sup> Upon retirement or upon separation from the employing establishment or being placed on 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.<sup>10</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>11</sup> however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his compensation.<sup>12</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

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> 5 U.S.C. § 8702(a).

<sup>8</sup> *Id.* at § 8702(b).

<sup>9</sup> *Id.* at § 8707.

<sup>10</sup> *Id.* at § 8706.

<sup>11</sup> *Id.* at § 8707(b)(2).

<sup>12</sup> *Id.* at § 8706(b)(3)(B). See *B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

(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>13</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>14</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>15</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>16</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for which he was not at fault because OWCP failed to deduct OLI premiums from his FECA compensation.

Appellant submitted a Standard Form 2817 dated July 17, 2012 and indicated that he elected Option B -- additional life insurance at one times his pay.

On February 16, 2016 appellant informed OWCP that on his last pay statement there was no deduction for life insurance as there had been since 1999. He indicated that he did not cancel the life insurance policy and sought his life insurance be reinstated immediately. In a March 7, 2019 preliminary overpayment determination, OWCP noted that it took action to update appellant's health insurance coverage due to an open enrollment change, but failed to input the applicable OLI deduction causing deductions for his life insurance to stop on January 7, 2018. The correction to add life insurance code Y1 was made effective January 29, 2019. The Board, accordingly, finds that an overpayment of compensation has been established.<sup>17</sup>

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<sup>13</sup> See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>14</sup> 5 C.F.R. § 870.504(a)(1).

<sup>15</sup> *Id.* at § 870.504(b).

<sup>16</sup> 5 U.S.C. § 8707(d); see also *B.B.* and *S.B.*, *supra* note 12.

<sup>17</sup> See *J.N.*, Docket No. 13-1761 (issued July 1, 2014).

The Board further finds that this case is not in posture for decision regarding the period and amount of the overpayment.

It is unclear from the record which premiums were deducted, OLI premiums or post-retirement basic life insurance (PRBLI). The record contains overpayment work sheets, but they fail to explain which premiums were deducted and the period of the deductions. 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.<sup>18</sup>

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>19</sup> The Board will, therefore, remand the case for OWCP to further explain its calculation of the period and amount of the overpayment.

On remand, OWCP shall determine the exact period and precise amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information.<sup>20</sup> After this and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>21</sup>

### **CONCLUSION**

The Board finds that OWCP properly found that appellant received an overpayment of compensation; however, the case is not in posture for decision regarding the period and amount of the overpayment.

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<sup>18</sup> 5 U.S.C. § 8707(d); *see also B.B. and S.B., supra* note 12.

<sup>19</sup> *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

<sup>20</sup> *See L.K.*, Docket No. 20-0416 (issued November 12, 2020).

<sup>21</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.



**ORDER**

**IT IS HEREBY ORDERED THAT** the September 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 8, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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