

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

_____)	
L.P., widow of K.P., Appellant)	
)	
and)	Docket No. 22-0752
)	Issued: August 4, 2023
DEPARTMENT OF THE NAVY, NAVAL)	
AVIATION DEPOT, Jacksonville, MD, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 13, 2022 appellant filed a timely appeal from April 7, 2022 merit decisions 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 the employee received an overpayment of compensation in the amount of \$1,208.01 for the period October 27, 1997 through August 13, 2015, for which he was without fault, because of an under withholding of basic life insurance (BLI) premiums; (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following April 7, 2022, 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.*

the employee received an overpayment of compensation in the amount of \$6,982.30 for the period October 29, 1998 through January 29, 2022, for which he was without fault, because of an under withholding of optional life insurance (OLI) premiums; and (3) whether OWCP properly denied waiver of recovery of the overpayments.

FACTUAL HISTORY

On September 8, 1997 the employee, then a 47-year-old plastics worker, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 1997 he injured his lower back and hips when he lifted steps while in the performance of duty. OWCP accepted the claim for lumbar sprain. It subsequently expanded the acceptance of the claim to include permanent aggravation of lumbar degenerative disc disease.

On December 10, 2021 the Office of Personnel Management (OPM) informed OWCP that as a compensationner the employee was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of BLI, OLI, and postretirement basic life insurance (PRBLI) coverage. The final base salary on which FEGLI was based was \$34,414.63. OPM requested that OWCP deduct life insurance premiums for the employee under code Z1 for BLI at 75 percent reduction, option A standard, option B-5X no reduction-incontestability, and option C-1X no reduction. It also informed OWCP that the commencing date for PRBLI premium deductions was October 29, 1998, and the commencing date for basic and optional coverage premiums was OWCP's commencing date. OPM submitted an election form signed by the employee on August 14, 2015 indicating his election of Option C (family) with no reduction. It also submitted an election form signed by the employee on August 15, 2015 indicating his election of his Option B (additional) with no reduction.

On January 21, 2022 OWCP informed the employee that OLI premiums stopped at age 70 and that any premiums deducted after age 70 would be reimbursed for the difference. It also informed him that his final base salary on which FEGLI was based was \$34,414.63.

In a preliminary overpayment determination dated February 25, 2022, OWCP notified the employee that he had received an overpayment of compensation in the amount of \$1,208.01 because it failed to deduct BLI premiums from his FECA compensation for the period October 27, 1997 through August 13, 2015 at the proper rate. It provided its calculations on the amount of compensation paid during the period. OWCP further advised the employee of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, it advised 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 separate preliminary overpayment determination also dated February 25, 2022, OWCP informed the employee that he was overpaid in the amount of \$6,982.30 because it had failed to properly deduct OLI premiums from his FECA compensation payments for the period October 29, 1998 through January 29, 2022. It provided its calculations on the amount of compensation paid during the period. OWCP further informed the employee of its preliminary determination that he

was without fault in creation of the overpayment. It provided him with an overpayment action request form and a overpayment recovery questionnaire (Form OWCP-20) for his completion and requested that he submit supporting financial documentation. Additionally, OWCP informed the employee of the actions he could take and afforded him 30 days to respond.

On March 7, 2022 appellant informed OWCP that the employee passed away on January 28, 2022. She also submitted a death certificate confirming his death and indicating that she was his widow.

Also on March 7, 2022 OWCP reissued the February 25, 2022 preliminary determinations and addressed them to the employee's estate. In a March 8, 2022 letter, addressed to the employee's estate, it provided a compensation due at death questionnaire for further information regarding the employee's estate. The form advised that the questionnaire should be completed by the administrator of the estate, if one had been appointed, or the next of kin.

On March 15, 2022 appellant requested a decision based on the written record regarding both preliminary determinations dated March 7, 2022. She requested waiver of recovery of the overpayment, contending that the employee was found without fault in the creation of the overpayment. In a completed Form OWCP-20 dated March 15, 2022, appellant reported monthly income totaling \$2,946.66, monthly expenses totaling \$2,953.20, and assets totaling \$55,200.00.

On March 22, 2022 OWCP received a completed compensation due at death questionnaire, dated March 16, 2022, wherein appellant noted that the employee had died intestate. The section regarding whether an administrator or executor had been appointed was left blank.³

By decisions dated April 7, 2022, addressed to the employee's estate, OWCP finalized both preliminary overpayment determinations dated March 7, 2022. It found that the employee had received an overpayment of compensation in the amount of \$1,208.01 because it failed to properly deduct BLI premiums from his FECA compensation for the period October 27, 1997 through August 13, 2015. OWCP also found that he had received a \$6,982.30 overpayment of compensation for the period October 29, 1998 through January 29, 2022 because it had failed to properly deduct OLI premiums from his FECA compensation payments. It further found that the employee was without fault in the creation of the overpayments, but denied waiver of recovery. OWCP required recovery of the overpayments in full.

LEGAL PRECEDENT -- ISSUES 1 & 2

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,

³ The final FECA wage-loss payment made to the employee's estate in the amount of \$1,516.08 was issued by OWCP for the period January 29 through February 26, 2022, resulting in an overpayment. On March 15, 2022 the employee's estate repaid the \$1,516.08 overpayment in full.

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 Federal Employees' Group Life Insurance 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 Upon retirement, separation from the employing establishment, or placement on the periodic rolls, an employee may choose to continue basic 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.⁹

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides that an employee receiving compensation under FECA may elect continuous withholdings from his or her compensation, so that his or her life insurance coverage may be continued without reduction. OWCP's regulations at 5 C.F.R. § 870.701 (December 5, 1980) provide that an eligible employee has 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).¹⁰

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 remained in effect.¹¹ An employee who does not file a life insurance election form 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.¹²

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8706.

¹⁰ See *R.B., (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹¹ 20 C.F.R. § 870.504(a)(1).

¹² *Id.* at § 870.504(b).

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.¹³

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹⁴

Thus, it should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP).¹⁵ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12.¹⁶ Including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁷

ANALYSIS -- ISSUES 1 & 2

The Board finds that this case is not in posture for decision.

OWCP's procedures provide for recovery from a deceased debtor's estate.¹⁸ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.¹⁹ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,²⁰ including sending the complete referral package to the national office for final review and forwarding to the FMS.²¹

The evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include a referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. The case shall therefore be remanded to

¹³ 5 U.S.C. § 8707(d); *see also* *D.R., (G.R.)*, Docket No. 19-1675 (issued October 8, 2020); *supra* note 10.

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2020).

¹⁵ *Id.*; 31 C.F.R. § 285.2; *see also* *R.B., (J.B.)*, *supra* note 10; *W.J., (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

¹⁶ *Id.* at Chapter 6.500.12 (September 2020).

¹⁷ *Id.* at Chapter 6.500.15(e).

¹⁸ *Supra* note 14.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedure manual.²² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.²³

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2022 merit decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 4, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²² *D.J.*, Docket No. 22-0012 (issued August 18, 2022).

²³ In light of the Board's disposition of Issues 1 and 2, Issue 3 is moot.