

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

A.F., Executrix of the Estate of J.M., Appellant)	
)	
and)	Docket No. 23-0401
)	Issued: August 1, 2023
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Pittsburgh, PA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Allan Opsitnick, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 20, 2023 appellant, through counsel, filed a timely appeal from a July 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP properly determined that the employee received an overpayment of compensation in the amount of \$11,048.21, for which he was without fault,

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

because post-retirement basic life insurance (PRBLI) premiums were not deducted from the employee's FECA wage-loss compensation for the period May 1, 1986 through August 27, 2019; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 31, 1980 the employee, then a 52-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that his severe angina had been caused or aggravated by his employment duties. OWCP accepted the claim for aggravation of coronary atherosclerosis with angina pectoris. It paid the employee on the periodic rolls for total disability commencing May 1, 1986.

On August 28, 2019 appellant, the employee's daughter, advised OWCP that the employee passed away on August 27, 2019 and to contact her if further information was required.

In a letter dated May 18, 2022, the Office of Personnel Management (OPM) informed OWCP that Basic Life insurance premiums should have been withheld at no reduction from the employee's FECA compensation benefits. OPM forwarded a Federal Employees' Group Life Insurance Program (FEGLI) election of PRBLI coverage which the employee signed on March 16, 1984 electing coverage with no reduction.

In a June 23, 2022 overpayment calculation memorandum, OWCP noted that it had failed to deduct PRBLI premiums from the employee's compensation from May 1, 1986, the date OPM retirement annuity benefits terminated, until August 27, 2019, the date of the employee's death, resulting in an overpayment of compensation in the amount of \$11,048.21.

In a June 23, 2022 preliminary overpayment determination, OWCP notified the employee's estate that a preliminary determination had been made that the employee had been overpaid in the amount of \$11,048.21 due to the failure of OWCP to deduct PRBLI premiums from the employee's payments from May 1, 1986 through August 27, 2019, the date of the employee's death. It forwarded an overpayment recovery questionnaire (Form OWCP-20) for completion to determine a fair repayment method.

Appellant responded on behalf of the estate by completing the Form OWCP-20 on July 12, 2022. She indicated that the questions regarding income, expenses, and assets were not applicable. In an accompanying letter, counsel for appellant related that the employee's estate had been fully distributed, therefore waiver of recovery of the overpayment was requested.

By decision dated July 27, 2022, which was addressed to the employee's estate at the employee's address of record, OWCP found an overpayment of compensation in the amount of \$11,048.21 for which the estate was not at fault. It noted that while the estate had indicated that the assets of the estate had been disbursed, there was no documentation related to resources and liabilities. It denied waiver of recovery of the overpayment as the estate's resources and liabilities had not been established and that information submitted was insufficient to support waiver of recovery of the overpayment. OWCP directed the recovery of the overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUES 1 and 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.³ 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.⁴

Under the Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and one or more of the options.⁵ The coverage for BLI is effective unless waived,⁶ and premiums for BLI and optional life insurance (OLI) coverage are withheld from the employee's pay.⁷ Upon retirement, separation from the employing establishment, or placement on the periodic 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

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).⁹

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.¹⁰ An employee who does not file a life insurance election form with his or her employing office, in a manner designated

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ See *R.B., (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹⁰ 20 C.F.R. § 870.504(a)(1).

by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.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

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.¹³

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).¹⁴ 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 6.500.12.¹⁵ Including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁶

ANALYSIS -- ISSUES 1 and 2

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

In a June 23, 2022 preliminary overpayment determination, OWCP notified the employee's estate that a preliminary determination had been made that the employee had been overpaid in the amount of \$11,048.21 due to the failure of OWCP to deduct PRBLI premiums from the employee's payments from May 1, 1986 through August 27, 2019, the date of the employee's death.

OWCP's procedures provide for recovery from a deceased debtor's estate.¹⁷ 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.¹⁸

¹¹ *Id.* at § 870.504(b).

¹² 5 U.S.C. § 8707(d); *see also D.R., (G.R.)*, Docket No. 19-1675 (issued October 8, 2020); *R.B., (J.B.), and D.H.*, *supra* note 9.

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2020).

¹⁴ 31 C.F.R. § 285.2; *id.* at Chapter 6.500.15g(1)-(7) (September 2020). *See also R.B., (J.B.)*, *supra* note 9; *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

¹⁵ *Id.* at Chapter 6.500.12 (September 2020).

¹⁶ *Id.* at Chapter 6.500.15e.

¹⁷ *Supra* note 13.

¹⁸ *Supra* note 16.

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 6.500.12,¹⁹ including sending the complete referral package to the national office for final review and forwarding to the FMS.²⁰

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 OWCP to follow all procedures as outlined in Chapter 6.500.15 of the Federal (FECA) Procedure Manual. 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.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 1, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁹ *Supra* note 17.

²⁰ *Supra* note 18.