

compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On March 7, 2003 appellant, then a 52-year-old electronics technician, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2003 she experienced pain in her back, left shoulder, and left arm when remounting a bearing while in the performance of duty. OWCP accepted the claim for cervical radiculopathy. Appellant stopped work on February 28, 2003 and did not return. OWCP paid her wage-loss compensation on the supplemental rolls effective April 15, 2003, and on the periodic rolls effective June 15, 2003.

On November 2, 2015 OWCP advised appellant that she had the option to continue deductions for OLI after the age of 65 and requested that she complete an attached form and send it to the Office of Personnel Management (OPM) for further information and to receive an election form.

On January 8, 2016 OPM advised OWCP that, as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage. The final base salary on which FEGLI was based was \$52,261.00. OPM requested that OWCP deduct premiums using Code X0 for basic life insurance (BLI), Option A standard, and Option B with five multiples. It advised that appellant's postretirement election was a 75 percent reduction with a commencing date of April 17, 2004. OPM indicated that it should freeze option B with five multiples effective February 2, 2016. It advised that "[b]asic and option coverage premiums begin on the OWCP commencing date."

In an April 12, 2016 memorandum of telephone call (Form CA-110), appellant again questioned why OWCP was not deducting her life insurance premiums for her compensation. A claims examiner advised appellant that her life insurance would be updated once OWCP had received notice from OPM.

In a letter dated July 12, 2016, appellant advised OWCP that her benefit statements did not reflect deductions for life insurance premiums. She asserted that OPM had informed her that it had provided the information regarding her life insurance selection to OWCP.

On August 2, 2016 OWCP began deducting appellant's OLI premiums from her wage-loss compensation effective July 24, 2016. It stopped deducting OLI premiums, however, on January 31, 2021. On January 29, 2023 OWCP reinstated deductions for OLI premiums on January 29, 2023.

³ Docket No. 22-0388 (issued January 19, 2023).

A CA-110 form dated February 7, 2023 indicated that appellant telephoned OWCP questioning why OLI was not being deducted from other payments. OWCP advised that the deductions had been reinstated.

In a February 10, 2023 manual adjustment form, OWCP advised that it should have withheld OLI premiums of \$1,717.20 for the period February 7 through July 23, 2016 and \$12,310.77 for the period January 31, 2021 through January 28, 2023, for total of \$14,027.97. It determined that it had withheld no premiums for OLI during this time.

In a preliminary overpayment determination dated February 13, 2023, OWCP found that appellant had received an overpayment of compensation in the amount of \$14,027.97 because it had failed to deduct premiums for OLI from her compensation payments for the periods February 7 through July 23, 2016 and January 31, 2021 through January 28, 2023. It summarized its calculation of the overpayment. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) and submit 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. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precouplement hearing.

On February 12, 2023 appellant requested information about her life insurance policy and her insurance beneficiaries. She advised that she had previously requested this information on February 6, 2022 and that OPM had told her to contact OWCP for information about her life insurance.

In an overpayment action request form dated March 10, 2023, appellant requested a decision based on the written evidence. She requested waiver as she was without fault in the creation of the overpayment. Appellant advised that she was unaware deductions were not being taken from her compensation for life insurance premiums during the relevant periods. She submitted a bank statement showing a checking account balance of \$7,806.37 in March 2023.

In an OWCP-20 form received March 12, 2023, appellant advised that she had monthly income of \$3,561.07 and monthly expenses of \$5,188.77. She listed assets of \$8,098.79.

By decision dated August 3, 2023, OWCP finalized its preliminary overpayment determination finding that appellant had received a \$14,027.97 overpayment of compensation because it failed to deduct OLI insurance premiums from her compensation payments for the periods February 7 through July 23, 2016 and January 31, 2021 through January 28, 2023. It further finalized its preliminary determination that she was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment as she had not submitted sufficient supporting financial information and as her assets exceeded the resource basis for waiver of recovery. OWCP determined that it would recover the overpayment by withholding \$250.00 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.⁴ 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.⁵

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.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 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.⁹ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁰ however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his or her compensation.¹¹

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).¹² When an under withholding of life insurance premiums occurs, the entire

⁴ *Supra* note 1 at § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ 5 U.S.C. § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8706.

¹⁰ *Id.* at § 8707(b)(2).

¹¹ *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

¹² *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).

amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹³

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$14,029.97 for the periods February 7 through July 23, 2016, and January 31, 2021 through January 28, 2023.

The record contains OPM's January 8, 2016 letter notifying OWCP that appellant had OLI for which it should have been deducting premiums effective the OWCP commencing date. OWCP thereafter, determined that OLI premiums had not been deducted for the periods February 7 through July 23, 2016 and January 31, 2021 through January 28, 2023.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received a \$14,027.97 overpayment due to its failure to properly deduct premiums for OLI. While the record includes multiple communications from OPM regarding appellant's OLI coverage, there is no evidence that the employee affirmatively signed a document electing OLI coverage, the specific type of coverage elected, or the commencing date. The record does not contain a signed election form showing which coverage she selected or that she actually selected coverage. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage in order to establish the fact of overpayment of compensation.¹⁴ As OWCP has not factually established the employee's election of OLI on the relevant dates, it has not met its burden of proof to establish that a \$14,027.97 overpayment was created for the periods February 7 through July 23, 2016 and January 31, 2021 through January 28, 2023.¹⁵

The Board therefore finds that OWCP failed to meet its burden of proof to establish that an overpayment of compensation occurred.¹⁶

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$14,029.97 for the periods February 7 through July 23, 2016 and January 31, 2021 through January 28, 2023.

¹³ 5 U.S.C. § 8707(d); *see also J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, *supra* note 11.

¹⁴ *K.T.*, Docket No. 23-0205 (issued June 28, 2023); *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).

¹⁵ *K.T.*, *id.*; *J.P.*, *id.*

¹⁶ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 10, 2024
Washington, DC

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

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

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