

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

J.M., Appellant)	
)	
and)	Docket No. 24-0356
)	Issued: May 24, 2024
U.S. POSTAL SERVICE, PHILLY METRO)	
DISTRICT POST OFFICE, Philadelphia, PA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 12, 2024 appellant filed a timely appeal from a January 24, 2024 merit decision 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$4,175.01 during the period October 9, 2021 through August 12, 2023, for which he was without fault, as OWCP failed to deduct postretirement basic life insurance (PRBLI) premiums from his FECA wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$170.00 from appellant's continuing compensation payments every 28 days; and

¹ 5 U.S.C. § 8101 *et seq.*

(4) whether OWCP properly found that appellant abandoned his request for a prerecoupment hearing.

FACTUAL HISTORY

On August 10, 2020 appellant, then a 61-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2020 he developed anxiety when he was robbed at gunpoint while in the performance of duty. He stopped work on July 29, 2020, and has not returned. By decision dated January 14, 2021, OWCP accepted the claim for acute stress reaction. By decision dated February 8, 2023, it expanded acceptance of the claim to include aggravation of post-traumatic stress disorder (PTSD). OWCP paid appellant wage-loss compensation on the supplemental rolls effective September 1, 2020, and on the periodic rolls effective February 28, 2021.

In a May 3, 2021 letter, the Department of Veterans Affairs (VA) indicated that appellant's percentage of service-connected disability had increased to 100 percent effective December 22, 2020 due to PTSD. It advised, in a May 14, 2021 letter that, effective January 1, 2021, his net monthly benefit was \$3,146.42. On June 12, 2023 appellant elected, effective that date, FECA compensation benefits in lieu of benefits under the VA.

On June 22, 2023 the Office of Personnel Management (OPM) advised OWCP that appellant was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that appellant had elected basic PRBLI coverage (with no reduction). OPM noted that the deductions for basic life insurance (BLI) and optional life insurance (OLI) should be made based on appellant's annual salary of \$69,171.00. It also noted that BLI and OLI premiums began on the 12-month leave without pay (LWOP) date of October 9, 2021. OWCP also received the first page of a FEGLI form entitled Continuation of Life Insurance Coverage as an Annuitant or Compensationeer, which appellant had signed on April 3, 2023. The form indicated that he selected PRBLI with no reduction in his BLI coverage postretirement. The last paragraph of this page referenced OLI Options A, B, and C and appellant as selecting none of these options.

On September 19, 2023 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,175.01 for the period October 9, 2021 through August 12, 2023, because PRBLI premiums had not been deducted from his compensation payments. It provided a detailed summary of its calculation of the overpayment and advised that he was without fault in its creation. OWCP also noted that, effective August 13, 2023, appellant's compensation payments were adjusted for deduction of the proper PRBLI premium. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised him that he could request waiver of recovery of the overpayment. OWCP also requested that appellant provide financial documentation including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records that support income and expenses. It 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 prerecoupment hearing.

By an overpayment action request form postmarked September 25, 2023, appellant requested a prerecoumment hearing regarding the issue of possible waiver of the overpayment before a representative of OWCP's Branch of Hearings and Review. Appellant also completed an overpayment action request form requesting waiver of recovery of the overpayment. On the Form OWCP-20 he listed total monthly income of \$3,621.50 from other benefits, such as the VA, and total monthly expenses of \$3,700.00.² Appellant indicated that he did not have any assets, but had \$100.00 in a checking account and \$20.00 in savings, for a total of \$120.00. He provided supporting financial information, which consisted of bank statements, a water and sewer bill, a copy of his 2022 Wage and Tax Statement (Form W-2), 2022 Thrift Savings Plan (TSP) tax documents, earning and leave statements (retirement), and a gas and an electric bill addressed to G.W. at appellant's address.

On December 1, 2023 OWCP's hearing representative informed appellant of the time and location of his prerecoumment hearing scheduled for January 11, 2024 at 1:15 p.m. Eastern Standard Time (EST) regarding OWCP's September 19, 2023 preliminary overpayment determination. She mailed the notice to appellant's last known address of record and provided instructions on how to participate. Appellant did not appear at the hearing or request postponement of the hearing.

By decision dated January 24, 2024, OWCP's hearing representative, after conducting a review of the written record, found that appellant failed to attend the scheduled hearing and failed to contact the Branch of Hearings and Review or OWCP either prior to or within 10 days subsequent to the scheduled hearing to explain his failure to appear. The hearing representative, therefore, determined that appellant had abandoned his hearing request. OWCP's hearing representative further finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,175.01 for the period October 9, 2021 through August 12, 2023, because PRBLI premiums had not been deducted from his compensation payments. 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$170.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

FECA³ 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,

² Appellant noted \$1,700.00 in rent or mortgage; \$300.00 in food; \$600.00 in other expenses which included utilities (electricity, gas, fuel, telephone, water); and \$1,100.00 in other debts paid by monthly installments.

³ *Supra* note 1.

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 FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁶ The coverage for basic life insurance 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 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.⁹ Basic insurance 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 optional life insurance coverage, which is accomplished by authorizing withholdings from his 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

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.¹³ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 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 Edward J. Shea*, 43 ECAB 1022 (1992); *see also Glen B. Cox*, 42 ECAB 703 (1991).

¹² *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

¹³ 5 C.F.R. § 870.504(a)(1).

OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.¹⁴

OWCP's procedures, regarding PRBLI, provide:

“PRBLI prevents a life insurance benefit reduction at age 65. The default reduction is a reduction of 75 [percent], but the claimant can elect either ‘No Reduction’ or ‘50 [percent] Reduction.’ Claimants must elect this coverage when separated or retired from federal employment. The coverage is effective immediately, and the premiums continue until death. Prior to age 65, the claimant must pay for both BLI and PRBLI if it has been elected.”¹⁵

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.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$4,175.01 for the period October 9, 2021 through August 12, 2023, for which he was without fault, as OWCP failed to deduct PRBLI premiums from his FECA wage-loss compensation.

OWCP did not deduct PRBLI premiums from appellant's wage-loss compensation benefits for the period October 9, 2021 through August 12, 2023. As such, it calculated the amount of the resulting overpayment as \$4,175.01. The record contains the compensation payment record, as well as a detailed overpayment worksheet explaining the overpayment calculation and how the overpayment occurred.

While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he had selected.¹⁷ Moreover, as noted, when an underwithholding of PRBLI 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.¹⁸

¹⁴ *Id.* at § 504(b).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15c(3) (February 2013).

¹⁶ 5 U.S.C. § 8707(d); *A.S.*, Docket No. 23-0437 (issued February 16, 2024); *K.N.*, Docket No. 22-1364 (issued October 18, 2023); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹⁷ 5 C.F.R. § 870.504(b); *see A.S., id.; J.H.*, Docket No. 20-0281 (issued May 18, 2021); *S.P.*, Docket No. 17-1888 (issued July 18, 2018); *Cf. Charles F. Huisman*, Docket No. 93-2298 (issued January 29, 1996); *John E. Rowland*, 39 ECAB 1377 (1988).

¹⁸ *Supra* note 16.

As OWCP failed to deduct PRBLI premiums for the period October 9, 2021 through August 12, 2023, the Board finds that appellant received an overpayment of compensation in the amount of \$4,175.01 for the period October 9, 2021 through August 12, 2023, for which he was without fault.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁹

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²⁰ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²¹ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²²

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁹ 5 U.S.C. § 8129.

²⁰ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²¹ *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²² 20 C.F.R. § 10.437(a), (b).

²³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁴

Appellant submitted a completed Form OWCP-20, wherein he reported total monthly income of \$3,621.50 from the VA, and total monthly expenses of \$3,700.00.²⁵ He indicated that he did not have any assets, but had \$100.00 in checking and \$20.00 in savings, for a total of \$120.00. Appellant submitted some financial documentation in support of his reported income, expenses, and assets. In comparing appellant's financial information to the Form OWCP-20, the Board finds that appellant did not include his OWCP net benefits of \$1,709.42 as part of his monthly income, therefore the actual amount of appellant's monthly income was higher than the reported \$3,621.50 monthly amount from VA. Also appellant's monthly expenses could not be verified as the financial documentation he provided failed to indicate whether the monthly billing statements were the minimum amount due or a monthly amount, and some of the expenses claimed (such as dental and doctor payments) did not indicate whether they were recurring monthly out-of-pocket expenses. Furthermore,

As appellant did not submit the financial information under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁶ Section 10.441(a) of the regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$170.00 from appellant's continuing compensation payments every 28 days.

²⁴ *Supra* note 20.

²⁵ *Supra* note 2.

²⁶ *See K.W.*, Docket No. 23-1166 (issued February 14, 2024); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²⁷ 20 C.F.R. § 10.441(a).

Based on the evidence of record, OWCP gave due regard to the relevant factors to minimize hardship and did not abuse its discretion in setting the rate of recovery.²⁸ The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$1 70.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 4

A claimant dissatisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before an OWCP representative.²⁹ Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time, place, and method of the oral hearing to the claimant and to any representative at least 30 days before the scheduled hearing date.³⁰

A hearing before OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.³¹ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedures³² and section 10.622(f) of its regulations³³ provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district office.³⁴

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing.

OWCP's Branch of Hearings and Review received appellant's September 25, 2023 request for a prerecoupment hearing on October 3, 2023. In a December 1, 2023 letter, OWCP provided appellant 30 days written notice of the hearing, which was scheduled for January 11, 2024 at 1:15 p.m. EST. It mailed the December 1, 2023 notice of hearing to appellant's last known address of record, and it was not returned as undeliverable. Absent evidence to the contrary, a notice mailed

²⁸ See *K.W.*, *supra* note 26; *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

²⁹ *Supra* note 4 at § 8124(b).

³⁰ *Supra* note 20 at § 10.617(b).

³¹ *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

³² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020).

³³ *Supra* note 20 at § 10.622(f).

³⁴ *Id.*

in the ordinary course of business is presumed to have been received by the intended recipient.³⁵ The presumption is commonly referred to as the “mailbox rule.”³⁶ It arises when the record reflects that the notice was properly addressed and duly mailed.³⁷ The current record is devoid of evidence to rebut the presumption that appellant received OWCP’s December 1, 2023 notice of hearing.

Appellant did not call-in for the January 11, 2024 hearing, and there is no indication that he requested postponement of the telephonic hearing.³⁸ Moreover, he did not submit a written request within 10 days to reschedule the hearing. The Board, therefore, finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing.³⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,175.01 for the period October 9, 2021 through August 12, 2023, for which he was without fault, as OWCP failed to deduct PRBLI premiums from his FECA wage-loss compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$170.00 from his continuing compensation payments every 28 days. The Board also finds that OWCP properly found that appellant abandoned his request for a prerecoupment hearing.

³⁵ *C.Y.*, *supra* note 31; *Kenneth E. Harris*, 54 ECAB 502 (2003).

³⁶ *Id.*

³⁷ *Id.*

³⁸ 20 C.F.R. § 10.622(c).

³⁹ *A.R.*, Docket No. 21-1000 (issued March 25, 2022); *C.Y.*, *supra* note 31; *M.V.*, Docket No. 17-1795 (issued March 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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