

required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On January 11, 1991 appellant, then a 38-year-old automobile mechanic filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped on snow-covered ice and fell, injuring his knees, right elbow, and right hand while in the performance of duty. OWCP accepted the claim for bilateral knee strain and right elbow contusion. It subsequently expanded the acceptance of the claim to include permanent aggravation of preexisting degenerative joint disease of the knees and acute embolism and thrombosis of the deep veins of the lower extremities. OWCP paid appellant wage-loss compensation on the periodic rolls commencing December 20, 2009.

On June 16, 2017 the Office of Personnel Management (OPM) informed OWCP that, as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage. The final base salary on which his FEGLI coverage was based was \$57,486.00. OPM requested that OWCP deduct life insurance premiums pursuant to his election of coverage. It also informed OWCP that the commencement date for post-retirement basic life insurance (PRBLI) premium deductions was November 20, 2010, and the commencement date for basic life insurance (BLI) and optional life insurance (OLI) premiums was April 1, 2017.

On June 20, 2017 OWCP indicated that it would adjust appellant's wage-loss compensation to include OLI deductions based on the June 20, 2017 letter from OPM.

On July 26, 2017 OWCP advised appellant that he would be paid compensation benefits that included deductions for OLI premiums of \$156.66 each period. On September 20, 2018 it adjusted appellant's wage-loss compensation, effective September 16, 2018 to recover an overpayment.

OPM, on May 2, 2023, again advised OWCP that appellant had elected FEGLI basic at 75 percent reduction, OLI Option B at two times salary and no reduction effective September 16, 2018, and OLI Option C five times salary and no reduction effective September 16, 2018. The record includes October 8, 2021 correspondence from OPM requesting that OWCP make the necessary adjustment as no PRBLI premiums had been deducted.

On May 2, 2023 an OWCP compensation worksheet indicated that beginning October 15, 2017 appellant's gross compensation every 28 days was \$3,783.00, with deductions for BLI premiums of 0, for OLI premiums of \$156.68, and for PRBLI premiums of 0 for net compensation of \$3,256.48. Beginning May 21, 2023, appellant's gross compensation on the periodic rolls was \$4,678.00, with deductions of OLI premiums of \$237.82, and for PRBLI premiums of 0.

The record contains a fiscal memorandum to file and a periodic rolls payment history showing no deduction of premiums for OLI from September 16, 2018 through May 20, 2023. The record also contains a compensation payment history showing no deduction of premiums for OLI from September 16, 2018 through May 20, 2023.

In a preliminary overpayment determination dated June 8, 2023, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the

amount of \$10,666.99 for the period September 16, 2018 through May 20, 2023, because premiums for life insurance had not been properly deducted from his compensation payments. It noted that there was no cost for BLI or PRBLI at 75 percent reduction after age 65. OWCP summarized its calculation of the overpayment, finding that OLI Option B premiums should have been deducted in the amount of \$8,667.69, and OLI Option C should have been deducted in the amount of \$1,999.30, for a total overpayment of \$10,666.99. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records that support income and expenses. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days, he could request a final decision based on the written evidence, or a prerecoumment hearing.

On June 30, 2023 appellant requested waiver of recovery of the overpayment and a prerecoumment hearing. He submitted a completed Form OWCP-20 wherein he listed total monthly income of \$6,794.19 and his total monthly expenses of \$4,042.00. Appellant further indicated that he had assets totaling \$14,500.00. He provided supporting financial documentation.

A prerecoumment hearing was held on November 3, 2023. Appellant subsequently provided an additional statement listing his monthly expenses as \$4,797.00. He further advised that due to health conditions he planned to remodel his home to improve accessibility at a cost of \$25,000.00. Appellant advised that he could repay the overpayment in the amount of \$100.00 per month.

By decision dated January 17, 2024, OWCP's hearing representative finalized the June 8, 2023 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$10,666.99 for the period September 16, 2018 through May 20, 2023, because premiums for life insurance were not deducted from his FECA compensation. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record did not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$300.00 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 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

³ *Supra* note 2.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

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

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).

¹⁴ *Id.* at § 504(b).

The Board has recognized that, when an under withholding of premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$10,666.99 for the period September 16, 2018 through May 20, 2023.

The record contains OPM's June 16, 2017 and May 2, 2023 letters notifying OWCP that appellant had OLI and PRBLI 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 period September 16, 2018 through May 20, 2023.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received a \$10,666.99 overpayment due to its failure to properly deduct life insurance premiums. While the record includes multiple communications from OPM regarding appellant's life insurance coverage, there is no evidence that appellant affirmatively signed a document electing OLI and PRBLI coverage, the specific type of coverage elected, or the date of commencement. 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.¹⁶ As OWCP has not factually established the employee's election of OLI and PRBLI on the relevant dates, it has not met its burden of proof to establish that a \$10,666.99 overpayment was created for the period September 16, 2018 through May 20, 2023.¹⁷ The Board therefore finds that OWCP failed to meet its burden of proof to establish fact of overpayment.¹⁸

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$10,666.99 for the period September 16, 2018 through May 20, 2023.

¹⁵ *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *James Lloyd Orte*, 48 ECAB 334 (1997).

¹⁶ *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).

¹⁷ *K.T.*, *id.*; *J.P.*, *id.*

¹⁸ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 17, 2024
Washington, DC

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

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

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