



## **FACTUAL HISTORY**

On August 16, 1995 appellant, then a 27-year-old mail clerk, sustained injury to both knees while unloading a classified box onto a truck. She tripped and fell out of the truck. OWCP accepted her claim for bilateral knee contusions; sprain of other specified sites of the left knee and leg; derangement of anterior horn of the left medial meniscus; phlebitis and thrombophlebitis of the deep vessels of the left lower extremity; left knee joint replacement; osteoarthritis unspecified of left lower leg; sprain of right knee, medial collateral ligament; infection and inflammatory reaction due to left internal joint prosthesis; and streptococcus group B infection. OWCP paid wage-loss compensation and medical benefits.

On March 22, 2014 OWCP received a health benefit election form in which appellant asked that her benefits be changed from coverage for self to coverage for family effective February 6, 2014, the date of her marriage.

On May 6, 2014 OWCP issued a preliminary determination finding that appellant received an overpayment of compensation in the amount of \$344.69 from February 6 to April 5, 2014 because she changed her health benefit coverage from self to family, but the deductions for health benefits did not reflect this change. Appellant was not at fault in the creation of the overpayment. She was advised that, if she disagreed to amount of the overpayment, she had a right to a hearing. If she requested waiver, appellant was asked to provide financial information within 30 days. It further informed she that if she did not provide the financial information within 30 days, it would result in the denial of waiver. In an accompanying manual adjustment form, OWCP noted that from February 6 to April 4, 2014, \$256.90 was deducted for health benefits under code 111; but deductions should have been made in the amount of \$601.59 for health benefits under code 112. The difference represented an overpayment of \$344.69.

On May 9, 2014 appellant responded to the overpayment recovery questionnaire. She listed monthly income of \$89.00 from social security and stated that she supported her spouse. Appellant did not provide any information about her monthly expenses. On the overpayment action request, she requested a waiver, asked that OWCP make a decision based on the written evidence, and stated that she contested the fact of overpayment because it occurred through no fault of her own.

By decision dated June 9, 2014, OWCP finalized the overpayment to appellant in the amount of \$344.69. Although she was found without fault in the creation of the overpayment, she had not provided sufficient financial documentation, for granting waiver of recovery of the overpayment. OWCP stated that the sum of \$344.69 would be withheld from her continuing compensation payments beginning June 1, 2014, and shall be absorbed by June 28, 2014.

## **LEGAL PRECEDENT -- ISSUE 1**

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employees Health Benefits (FEHB) program. The regulations of the Office of Personnel Management (OPM), which administers the FEHB program, provides guidelines for

the registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(b)(1) provides:

“An employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholding or direct payment are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness to the United States in the amount of the proper employee withholding required for that pay period.”<sup>2</sup>

In addition, 5 C.F.R. § 890.502(c)(1) provides:

“An agency that withholds less than or none of the proper health benefits contributions for an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions.<sup>3</sup> The Board has recognized that, when an under withholding of health insurance 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.”<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$344.69 for the period February 6 to April 5, 2014. Appellant changed her Federal Health Benefits enrollment from self to family health insurance coverage effective as of the date of her marriage on February 6, 2014. The codes for withdrawing her health insurance premiums changed from 111 to 112. Deductions from February 6 to April 5, 2014 were made in the amount of \$256.90 under code 111 (self), but should have been made in the amount of \$601.69 under code 112 (family). The difference in the under deduction of her premium created an overpayment of \$344.69. When an under withholding of premiums is discovered, the amount is deemed an overpayment of compensation to the recipient. OWCP must pay the full amount of the premium to OPM when the error is discovered.<sup>5</sup> Because of the under deduction of health benefit premiums to reflect her coverage under code 112 for family this created an overpayment of compensation in the amount of \$344.69.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment of 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

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<sup>2</sup> 5 C.F.R. § 890.502(b)(1).

<sup>3</sup> See *E.G.*, Docket No. 13-989 (issued December 11, 2013); 5 U.S.C. § 890.502.

<sup>4</sup> *James Lloyd Otte*, 48 ECAB 334 (1997); see also *D.D.*, Docket No. 14-572 (issued June 9, 2014).

<sup>5</sup> *Id.*, see also *Keith H. Mapes*, 56 ECAB 130 (2004).

good conscience.<sup>6</sup> Section 10.438 of OWCP regulations provide 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.<sup>7</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

OWCP found appellant without fault in the creation of the overpayment. Waiver may 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.<sup>9</sup> Appellant, however, had the responsibility to provide complete financial information to OWCP<sup>10</sup> but failed to do so.<sup>11</sup>

In its preliminary determination dated May 6, 2014, OWCP clearly explained the importance of providing the requested financial information. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant only listed \$89.00 for income from social security. She did not include her wage-loss benefits under FECA as a part of her income. Appellant did not provide any information with regard to her monthly expenses or any supporting documentation. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. Because appellant did not submit the financial information required under section 10.438 of OWCP's regulations, it properly denied waiver of recovery of the overpayment.

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<sup>6</sup> 5 U.S.C. § 8129.

<sup>7</sup> Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. 20 C.F.R. § 10.437. OWCP procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009); *see W.F.*, 57 ECAB 705 (2006).

<sup>8</sup> 20 C.F.R. § 10.438(b).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 10.438; *see also K.P.*, Docket No. 12-1450 (issued April 4, 2013).

<sup>11</sup> On appeal, appellant submitted financial documents. As the Board's review is limited to evidence in the case record at the time OWCP made its decision over which the Board has jurisdiction, the Board cannot review this evidence submitted for the first time on appeal. *D.B.*, Docket No. 12-1653 (issued March 26, 2013); 20 C.F.R. § 501.2(c)(1).

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provide that, 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 the 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 hardship.<sup>12</sup>

### **ANALYSIS -- ISSUE 3**

OWCP determined that the entire amount of the overpayment, \$344.69, would be deducted from appellant's continuing compensation payment. In making this determination, it found that appellant failed to submit supporting financial documentation. Because appellant failed to submit the requested financial documentation, OWCP did not abuse its discretion in withholding \$344.69 from appellant's continuing compensation benefits. The Board will affirm the recovery of the overpayment.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$344.69 for the period February 6 to April 5, 2014 because health benefits were not properly deducted. It properly denied waiver of the recovery of the overpayment and required recovery by deducting \$344.69 from appellant's continuing compensation.

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<sup>12</sup> The Board has jurisdiction to review the issue of recovery of an overpayment in those cases where OWCP seeks recovery from continuing compensation benefits. *See Desiderio Martinez*, 55 ECAB 245, 251 (2004); *see also J.M.*, Docket No. 10-1913 (issued July 11, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 9, 2014 is affirmed.

Issued: November 3, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board