

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

_____)	
D.B., Appellant)	
)	
and)	Docket No. 19-1742
)	Issued: March 22, 2021
ENVIRONMENTAL PROTECTION AGENCY,)	
REGION I, Boston, MA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2019 appellant filed a timely appeal from a June 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 this case.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because she should be entitled to waiver of recovery of an overpayment that she was not at fault in creating, and that repayment of the overpayment would create a financial hardship. The Board, in exercising its discretion, denies her request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 17, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,138.15 for the period September 22, 2018 through March 30, 2019, for which she was not at fault, because health benefits insurance (HBI) premiums had not been properly deducted from her FECA compensation; and (2) whether OWCP properly denied waiver of the recovery of the overpayment.

FACTUAL HISTORY

On April 15, 2014 appellant, then a 58-year-old supervisory attorney, filed an occupational disease claim (Form CA-2) alleging that she experienced cardiac vaso spasms and that her asthma was exacerbated due to her exposure to poor air quality in her building at work. She noted that she first became aware of her conditions and their relationship to her federal employment on the filing date of her claim. Appellant did not stop work.

OWCP initially denied appellant's claim, but on November 22, 2016 accepted the claim for permanent aggravation of coronary vasospasm and non-ST Elevation myocardial infarction (NSTEMI). It subsequently expanded the acceptance of her claim to include permanent aggravation of preexisting asthma. OWCP paid appellant wage-loss compensation on the supplemental rolls for the period March 27, 2012 through December 9, 2017.

In letters dated October 19, 2018 and January 16, 2019, appellant informed OWCP that she married on September 22, 2018. In the January 16, 2019 letter, she indicated that she was adding her spouse to her insurance plan. On February 28, 2019 appellant submitted a Health Benefits Election Form (Form 2809), which noted that her new enrollment code was 105, effective September 22, 2018.

In an April 17, 2019 manual adjustment form, OWCP explained that an overpayment of compensation had occurred in the amount of \$2,138.15 for the period September 22, 2018 through March 30, 2019 because appellant had changed her health benefits plan from code 104 to code 105 due to her September 22, 2018 marriage. It calculated the overpayment by comparing the difference between the health premiums deducted under code 104 (\$51,969.77) and the health premiums she should have had deducted under code 105 (\$49,831.62) for the stated period.

In a preliminary overpayment determination dated May 15, 2019, OWCP notified appellant that an overpayment of compensation in the amount of \$2,138.15 had been created because HBI premiums had not been properly deducted from her FECA compensation for the period September 22, 2018 through March 30, 2019. It further advised her of its preliminary determination that she was not at fault in the creation of the overpayment. OWCP provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a preresumption hearing. No response was received.

By decision dated June 17, 2019, OWCP determined that appellant had received an overpayment of compensation in the amount of \$2,138.15 for the period September 22, 2018 through March 30, 2019, because it failed to properly deduct HBI premiums from her FECA compensation. It required recovery of the \$2,138.15 overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of 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 Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter 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 an individual is entitled.⁵

An employee entitled to disability compensation may continue his or her health benefits under the FEHB program. The Office of Personnel Management (OPM), which administers the FEHB program, by regulation provides guidelines for the registration, enrollment, and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“Employees and annuitants are responsible for paying the enrollee share of the cost of enrollment for every pay period during which they are enrolled. An employee or annuitant incurs a debt to the United States in the amount of the proper employee or annuitant withholding required for each pay period during which they are enrolled if the appropriate health benefits withholdings or direct premium payments are not made.”⁶

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

“An agency that withholds less than the amount due for health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the uncollected employee contributions and any applicable agency contributions required to OPM for deposit in the Employee’s Health Benefits Fund.”⁷

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁸ An establishment that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁹ The Board has recognized that, when an under withholding of health benefit 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.¹⁰

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 890.502(a)(1).

⁷ *Id.* at § 890.502(c).

⁸ *Id.* at § 890.502(b)(1).

⁹ *Id.* at § 890.502(d).

¹⁰ *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *J.W.*, Docket No. 14-1531 (issued November 3, 2014); *James Lloyd Otte*, 48 ECAB 334 (1997).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,138.15 for the period September 22, 2018 through March 30, 2019, for which she was not at fault, because HBI premiums had not been properly deducted from her compensation FECA compensation.

The record reveals that appellant changed her Federal Health Benefits enrollment from HBI code 104 to HBI code 105 for insurance coverage effective as of the date of her marriage on September 22, 2018. Deductions from September 22, 2018 to March 30, 2019 were made in the amount of \$51,969.77 under HBI code 104, but should have been made in the amount of \$49,831.62 under HBI code 105. The difference in the under deduction of appellant's premium created an overpayment of \$2,138.15. 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.¹¹ Because of the under deduction of health benefit premiums to reflect appellant's coverage under HBI code 105 for family this created an overpayment of compensation in the amount of \$2,138.15. The Board has reviewed the April 17, 2019 manual adjustment form that reflects the above-noted overpayment and therefore finds that an overpayment of compensation in the amount of \$2,138.15 was created for the period September 22, 2018 through March 30, 2019 for which appellant 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.¹² 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹³

ANALYSIS -- ISSUE 2

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

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.¹⁴ Appellant, however, had the responsibility to provide financial information to OWCP.¹⁵ OWCP provided

¹¹ *Id.*; see also *Keith H. Mapes*, 56 ECAB 130 (2004).

¹² 5 U.S.C. § 8129.

¹³ 20 C.F.R. § 10.438.

¹⁴ See *supra* note 12.

¹⁵ See *supra* note 13.

appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), to be completed and returned, however no response was received.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁶

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,138.15 for the period September 22, 2018 through March 30, 2019, for which she was not at fault, because HBI premiums had not been properly deducted from her compensation FECA compensation. The Board further finds that OWCP properly denied waiver of the recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁶ *Id.*; *M.B.*, Docket No. 19-1108 (issued October 19, 2020).