

² The Board notes that, following the May 17, 2021 decision, appellant submitted additional evidence to OWCP. 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 OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 13, 2020, due to her failure to attend scheduled medical examinations; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2021, as she no longer had disability or residuals causally related to her accepted July 1, 2019 employment injury; (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a); (4) whether appellant received an overpayment of compensation in the amount of \$2,416.38 for the period January 5, 2020 through February 27, 2021, for which she was not at fault, resulting from failure to deduct appropriate health and life insurance premiums; and (5) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 22, 2019 appellant, then a 62-year-old financial technician, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2019 she injured her left leg when she used a turnstile gate while in the performance of duty. She stopped work on July 3, 2019. OWCP accepted appellant's claim for left knee contusion. It paid her wage-loss compensation on the supplemental rolls commencing September 14, 2019, and on the periodic rolls commencing March 1, 2020.

In a July 24, 2020 letter, OWCP notified appellant that it had scheduled a second opinion examination on August 17, 2020 at 2:30 p.m. with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, to determine the status of her accepted July 1, 2019 employment injury. The letter contained the date, time, and location of appellant's appointment.³

Appellant contacted OWCP on August 17, 2020 at 2:16 p.m. to advise that she would not be attending the appointment schedule with Dr. Hanley at 2:30 p.m. on that date because the person who offered to provide her transportation had cancelled. She asserted that there were "no taxi services in her area or public transportation."

By decision dated August 18, 2020, OWCP suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 13, 2020, due to her

³ Appellant had previously failed to attend a July 20, 2020 appointment for a second opinion examination with Dr. John C. Barry, a Board-certified orthopedic surgeon. In a June 23, 2020 notice, OWCP informed appellant of the date, time, and place of the July 20, 2020 appointment and, in a July 20, 2020 notice, it advised her that it proposed to suspend her compensation for failure to attend the examination scheduled for July 20, 2020. In these documents, OWCP informed appellant of her obligations to attend and cooperate with an OWCP-directed examination, and explained that her compensation benefits would be suspended under 5 U.S.C. § 8123(d) for failure to report to or cooperate with such an examination. Appellant contacted OWCP by telephone on July 2 and 6, 2020 indicating that, because of her underlying health conditions and the COVID-19 pandemic, she was uncomfortable attending the medical appointment. OWCP advised her to include the aforementioned information in writing, request that the examination be rescheduled, and accompany the request with supporting medical documentation. Despite appellant's failure to attend the appointment with Dr. Barry, OWCP arranged for appellant to be examined by Dr. Hanley on August 17, 2020.

failure, without good cause, to attend medical examinations scheduled for July 20 and August 17, 2020.

On August 28, 2020 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

Following the August 18, 2020 suspension decision, appellant attended a second opinion examination with Dr. Barry on September 14, 2020 in order for OWCP to determine the extent and degree of any employment-related disability or residuals causally related to her accepted July 1, 2019 employment injury. OWCP provided Dr. Barry with a statement of accepted facts (SOAF) and a series of questions. It requested that he provide an opinion regarding whether appellant had continuing disability or residuals causally related to her July 1, 2019 employment injury, *i.e.*, a left knee contusion. In a report dated September 14, 2020, Dr. Barry discussed appellant's factual and medical history and reported the findings of his physical examination. He reported that there was no antalgia, tenderness, and soft tissue swelling in appellant's left knee. Dr. Barry determined that her left knee contusion had resolved with no residuals. He found that the medical evidence did not support any additional diagnoses as being related to the accepted July 1, 2019 employment injury by direct cause, aggravation, acceleration, or precipitation. Dr. Barry found that appellant did not have any work restrictions with respect to the left knee. In a work capacity evaluation (Form OWCP-5c) dated September 14, 2020, he indicated that she did not have any work restrictions.

By decision dated December 29, 2020, an OWCP hearing representative affirmed the August 18, 2020 suspension decision.

OWCP then requested that Dr. Barry provide a supplemental report regarding the question of whether appellant had continuing disability or residuals causally related to her July 1, 2019 employment injury. In a January 13, 2021 supplemental report, Dr. Barry indicated that appellant's completely normal physical examination on September 14, 2020 without any objective pathologic findings on examination was the reason that he had opined that the accepted left knee condition had resolved and that she no longer suffered from residuals of the accepted July 1, 2019 employment injury. He advised that his opinion was based on his review of the medical records, the history provided by appellant, and the objective findings on physical examination.

In a notice dated February 4, 2021, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted July 1, 2019 employment injury. It found that the weight of the medical opinion evidence regarding work-related disability and residuals rested with Dr. Barry's opinion. OWCP afforded appellant 30 days to submit evidence or argument in writing if she disagreed with the proposed termination. Appellant did not submit any evidence or argument within the afforded period.

By decision dated March 10, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective March 28, 2021, because she no longer had disability or residuals causally related to her accepted July 1, 2019 employment injury.

On March 16, 2021 appellant requested reconsideration of the March 10, 2021 decision on an appeal request form. She did not submit any evidence or argument in support of her reconsideration request. By decision dated March 19, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In a federal employee's health benefits information and certification form dated June 30, 2020, appellant changed her health insurance enrollment code from 131 to 104 effective January 5, 2020.⁴ Payment documents in the case record show the amount of premiums deducted from FECA compensation commencing January 5, 2020 for health benefits insurance (HBI); basic life insurance (BLI), and optional life insurance (OLI). OWCP was not notified of this enrollment change until April 8, 2021, the date that it received this form. The case record also contains an Office of Personnel Management (OPM) form, signed by appellant on February 28, 2021, in which she elected to receive Federal Employees Retirement System (FERS) benefits in lieu of FECA benefits effective February 28, 2021.

In a preliminary overpayment determination dated April 15, 2021, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$2,416.38, for the period January 5, 2020 through February 27, 2021, because HBI, BLI, and OLI premiums had not been properly deducted from her compensation payments. It noted that, in a federal employees' health benefits information and certification form dated June 30, 2020, she changed her health insurance enrollment code from 131 to 104 effective January 5, 2020. OWCP explained that health insurance benefit code 104 was more expensive than health insurance benefit code 131 and that it should have deducted BLI and OLI premiums based on a total annual base salary of \$57,510.00, which included base pay and locality pay rate. However, it instead calculated BLI and OLI premiums based on an annual base salary of \$44,471.00. OWCP noted that, based on these facts, it calculated a \$2,416.38 overpayment.⁵

OWCP also preliminarily determined that appellant was without fault in the creation of the overpayment. It provided her with an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP also advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It requested that she complete and return a financial information questionnaire (Form OWCP-20) within 30 days. OWCP also requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information

⁴ In section 10 of a claim for compensation (Form CA-7) dated October 11, 2019, the employing establishment had confirmed that appellant was enrolled in the Federal Employees Health Benefits (FEHB) program under code 131.

⁵ OWCP provided payment records and worksheets detailing the above-noted overpayment calculation. For the period January 5, 2020 through February 27, 2021, it deducted HBI premiums of \$1,594.20 (instead of the proper amount of \$3,533.46); BLI premiums of \$217.35 (instead of \$270.00); and OLI premiums of \$791.16 (instead of \$945.60). The difference between the amounts that were deducted and the amounts that should have been deducted is \$2,416.38.

within 30 days. Appellant did not respond to the preliminary overpayment determination within the afforded period.

By decision dated May 17, 2021, OWCP finalized its overpayment determination that appellant had received a \$2,416.38 overpayment of compensation. It found that she was without fault in the creation of the overpayment, but that the overpayment was not subject to waiver because she failed to provide the requested financial information.⁶

LEGAL PRECEDENT -- ISSUE 1

Section 8123 of FECA authorizes OWCP to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.⁷ The determination of the need for an examination, the type of examination, the choice of locale, and the choice of medical examiners are matters within the province and discretion of OWCP.⁸ OWCP's regulations provide that a claimant must submit to an examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.⁹ Section 8123(d) of FECA and OWCP regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.¹⁰ OWCP's procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.¹¹ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 13, 2020, due to her failure to attend scheduled medical examinations. OWCP notified appellant that she was being referred for a second opinion examination on July 20 and August 17, 2020 with Dr. Barry and Dr. Hanley, respectively, to determine the status of her accepted employment-related conditions. The letters

⁶ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

⁷ 5 U.S.C. § 8123.

⁸ *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁹ 20 C.F.R. § 10.320.

¹⁰ 5 U.S.C. § 8123(d); *see also* 20 C.F.R. § 10.323; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

¹² *Id.* at Chapter 2.810.13e.

also contained the date, time, and location of appellant's appointment. OWCP informed appellant of her obligations to attend and cooperate with an OWCP-directed examination and explained that her compensation benefits would be suspended, pursuant to 5 U.S.C. § 8123(d), for failure to report to or cooperate with such an examination.

Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.¹³ In the present case, the referral documents were sent to appellant's address of record and are presumed to have been received by her absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption.

Appellant did not appear for either the July 20, 2020 or August 17, 2020 appointments. With regard to the July 20, 2020 scheduled appointment with Dr. Barry, appellant contacted OWCP by telephone on July 2 and 6, 2020 indicating that, because of her underlying health conditions and the COVID-19 pandemic, she was uncomfortable attending the medical appointment. Although OWCP advised appellant to include the aforementioned information in writing, request that the examination be rescheduled, and accompany the request with supporting medical documentation, she did not do so. The Board finds that appellant did not provide good cause for her failure to attend the scheduled examination.¹⁴

With regard to the August 17, 2020 appointment, appellant contacted OWCP on August 17, 2020 at 2:16 p.m. to advise that she would not be attending the appointment scheduled with Dr. Hanley at 2:30 on that date because the person who offered to provide her transportation had cancelled. However, she did not provide good cause for her failure to appear in that she did not submit evidence showing that she was unable to get to the appointment using alternative transportation. Appellant generally asserted that there were "no taxi services in her area or public transportation," but she did not provide support for this assertion.¹⁵

As appellant did not attend the examinations as scheduled and failed to provide good cause for failing to appear, the Board finds that OWCP properly suspended her wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective September 13, 2020.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹⁷ After it has determined that, an employee

¹³ See *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *James A. Gray*, 54 ECAB 277 (2002).

¹⁴ See *B.C.*, Docket No. 21-1327 (issued January 31, 2023); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

¹⁵ See *R.H.*, Docket No. 09-1195 (issued February 25, 2010) (claimant asserted he could not attend an OWCP-directed appointment because he could not drive, but his compensation was suspended as he failed to submit evidence showing that he was unable to get to the appointment using public transportation).

¹⁶ See *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

¹⁷ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.²⁰ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2021, because she no longer had disability or residuals causally related to her accepted July 1, 2019 employment injury.

The weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Barry, OWCP's referral physician. The September 14, 2020 and January 13, 2021 reports of Dr. Barry establish that appellant had no disability or residuals due to her accepted July 1, 2019 employment injury after March 28, 2021.

In his report dated September 14, 2020, Dr. Barry discussed appellant's factual and medical history and reported the findings of his physical examination. He reported that there was no antalgia, tenderness, and soft tissue swelling in appellant's left knee, and determined that her left knee contusion had resolved with no residuals. Dr. Barry found that the medical evidence did not support any additional diagnoses as being related to the accepted July 1, 2019 employment injury by direct cause, aggravation, acceleration, or precipitation. He found that appellant did not have any work restrictions with respect to the left knee. In a work capacity evaluation dated September 14, 2020, Dr. Barry indicated that she did not have any work restrictions. In a January 13, 2021 supplemental report, he noted that appellant's completely normal physical examination on September 14, 2020 without any objective pathologic findings on examination was the reason that he had opined that the accepted left knee condition had resolved and that appellant no longer suffered from residuals of the accepted July 1, 2019 employment injury. Dr. Barry advised that his opinion was based on his review of the medical records, the history provided by appellant, and the objective findings on physical examination.

The Board has reviewed the opinion of Dr. Barry and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the issue of continuing work-related disability and residuals. Dr. Barry provided a thorough factual and medical history

¹⁸ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

¹⁹ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

²⁰ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

²¹ See *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant had no objective signs of the July 1, 2019 employment injury.²² Appellant did not submit any evidence or argument challenging the termination of her compensation. As there is no evidence of record that overcomes the weight accorded to Dr. Barry, the Board finds that OWCP has met its burden of proof.

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.²³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁴ A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On March 16, 2021 appellant timely requested reconsideration of OWCP's March 10, 2021 termination decision. She did not submit any evidence or argument in support of her

²² See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

²³ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

²⁴ 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁵ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²⁶ *Id.* at § 10.608(a); see *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

²⁷ *Id.* at § 10.608(b); see *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

reconsideration request. By decision dated March 19, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

As appellant did not submit any argument in support of her reconsideration request, the Board finds that she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. As she did not submit any evidence, the Board finds that she did not submit relevant and pertinent new evidence not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits based on the first, second, and third requirements under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁸

LEGAL PRECEDENT -- ISSUE 4

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.²⁹ 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.³⁰

An employee entitled to disability compensation may continue his or her health benefits under the FEHB program. 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 that 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 withholdings or direct premium payments 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.³¹ The Board has recognized that, when an underwithholding 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.³²

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the

²⁸ See *supra* notes 24 and 27.

²⁹ 5 U.S.C. § 8102(a).

³⁰ 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

³¹ *Id.* at § 890.502(a)1).

³² *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *James Lloyd Otte*, 48 ECAB 334 (1997).

forms of OLI.³³ The coverage for BLI is effective unless waived,³⁴ and premiums for BLI and OLI coverage are withheld from the employee's pay.³⁵ 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.³⁶ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.³⁷ However, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.³⁸

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).³⁹

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.⁴⁰ 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.⁴¹ When an underwithholding of life insurance premiums

³³ 5 U.S.C. § 8702(a); *I.J.*, Docket No. 1672 (issued March 10, 2020).

³⁴ 5 U.S.C. § 8702(b).

³⁵ *Id.* at § 8707.

³⁶ *Id.* at § 8706.

³⁷ *Id.* at § 8707(b)(2).

³⁸ *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

³⁹ *G.L.*, Docket No. 19-0297 (issued October 23, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁴⁰ 5 C.F.R. § 870.504(a)(1).

⁴¹ *Id.* at § 870.504(b).

occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.⁴²

ANALYSIS -- ISSUE 4

The Board finds that appellant received an overpayment of compensation in the amount of \$2,416.38 for the period January 5, 2020 through February 27, 2021, for which she was not at fault, resulting from failure to deduct appropriate health and life insurance premiums.

In a preliminary overpayment determination dated April 15, 2021, OWCP notified appellant of its preliminary finding that she received an overpayment of compensation in the amount of \$2,416.38 because HBI, BLI, and OLI premiums had not been properly deducted from her compensation payments for the period January 5, 2020 through February 27, 2021. It noted that, in a federal employees health benefits information and certification form dated June 30, 2020, appellant changed her health insurance enrollment code from 131 to 104 effective January 5, 2020. OWCP explained that health insurance benefit code 104 was more expensive than health insurance benefit code 131 and that OWCP should have deducted BLI and OLI premiums based on a total annual base salary of \$57,510.00, which included base pay and locality pay rate. However, it instead calculated BLI and OLI premiums based on an annual base salary of \$44,471.00. OWCP provided payment documents and worksheets explaining how it calculated the \$2,416.38 overpayment.⁴³ As noted, when an underwithholding of health insurance or 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.⁴⁴

The Board notes that OWCP properly calculated the amount of the overpayment and provided a clear and detailed explanation of the fact and amount of the overpayment. As OWCP failed to properly deduct HBI, BLI, and OLI premiums from January 5, 2020 through February 27, 2021, appellant received an overpayment of compensation of \$2,416.38 during this period.⁴⁵

LEGAL PRECEDENT -- ISSUE 5

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

⁴² *Id.* at § 8707(d).

⁴³ OWCP provided payment records and worksheets detailing the above-noted overpayment calculation. For the period January 5, 2020 through February 27, 2021, OWCP deducted HBI premiums of \$1,594.20 (instead of the proper amount of \$3,533.46); BLI premiums of \$217.35 (instead of \$270.00); and OLI premiums of \$791.16 (instead of \$945.60). The difference between the amounts that were deducted and the amounts that should have been deducted is \$2,416.38.

⁴⁴ *See supra* notes 32 and 42.

⁴⁵ *See J.C.*, Docket No. 17-1791 (issued February 23, 2018); *E.H.*, Docket No. 15-0848 (issued July 6, 2016); *V.B.*, Docket No. 15-0157 (issued March 16, 2015).

conscience.⁴⁶ 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.⁴⁷

ANALYSIS -- ISSUE 5

The Board finds that OWCP properly denied waiver of 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.⁴⁸ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.⁴⁹

In its preliminary overpayment determination dated April 15, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support appellant's reported income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit sufficient financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. She did not complete the Form OWCP-20 outlining her income, assets, and expenses. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.⁵⁰

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, OWCP properly denied waiver of recovery of the overpayment.⁵¹

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 13, 2020, due to her failure to attend scheduled medical examinations. The Board further finds that OWCP properly

⁴⁶ 5 U.S.C. § 8129.

⁴⁷ 20 C.F.R. § 10.438.

⁴⁸ *Id.* at § 10.436.

⁴⁹ *Supra* note 47.

⁵⁰ *Supra* note 48.

⁵¹ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

terminated appellant's wage-loss compensation and medical benefits, effective March 28, 2021, and that it properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). The Board also finds that appellant received an overpayment of compensation in the amount of \$2,416.38 for the period January 5, 2020 through February 27, 2021, for which she was not at fault, resulting from failure to deduct appropriate health and life insurance premiums, and that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT December 29, 2020, and March 10 and 19, and May 17, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 17, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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