United States Department of Labor
Employees' Compensation Appeals Board

K.N., Appellant	)	
	)	**Docket No. 22-1364**
and	)	**Issued: October 18, 2023**
U.S. POSTAL SERVICE, BELLMAWR POST OFFICE, Bellmawr, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 12, 2022 appellant filed a timely appeal from May 19 and June 22, 2022 merit decisions and an August 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability commencing January 29, 2015 causally related to her accepted employment injuries; (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the August 23, 2022 decision, appellant submitted 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*.

claim, pursuant to 5 U.S.C. § 8128(a); (3) whether appellant received an overpayment of compensation in the amount of $1,260.89 for the period January 15 through April 8, 2022, for which she was without fault, resulting from failure to deduct appropriate health and life insurance premiums; and (4) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision and orders are incorporated herein by reference. The relevant facts are as follows.

On April 7, 2004 appellant, then a 42-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained numbness and tingling in her hands and elbows due to factors of her federal employment, including bagging heavy mail. OWCP assigned the claim OWCP File No. xxxxxx674, accepted it for bilateral carpal tunnel syndrome, and paid appellant wage-loss compensation on the supplemental rolls, effective February 1, 2004.[4] Appellant underwent an OWCP-authorized right anterior subcutaneous ulnar nerve transposition on November 22, 2004 and began working in modified position in March 2006.[5] She stopped work on October 13, 2007.

On December 13, 2012 OWCP expanded the acceptance of appellant's claim to include bilateral lesions of the ulnar nerve, right shoulder sprain and right trigger finger.

On July 31, 2014 OWCP expanded the acceptance of appellant's claim to include left trigger thumb under File No. xxxxxx674. On September 11, 2014 appellant underwent an OWCP-authorized left trigger finger release and was subsequently provided appropriate benefits. She returned to part-time limited-duty work on October 29, 2014. On October 29, 2014 appellant accepted a part-time, limited-duty assignment as an expedition clerk. The physical requirements involved intermittent simple grasping for two hours per day, intermittent fine manipulation for two hours, and standing for two hours. Appellant worked for two hours per day from October 29, 2014 through January 28, 2015.

[3] Docket No. 20-1188 (issued July 20, 2021); *Order Remanding Case*, Docket No. 17-0771 (issued August 9, 2018); *Order Remanding Case*, Docket No. 16-1412 (issued December 20, 2016); *Order Remanding Case*, Docket No. 11-779 (issued January 12, 2011).

[4] OWCP later paid wage-loss compensation on the periodic rolls for the period March 10 through September 21, 2013.

[5] The record reveals that appellant had a prior traumatic injury claim (Form CA-1) with an October 17, 2001 date of injury, which was accepted for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx739. OWCP authorized right carpal tunnel surgery performed on February 25, 2002, and left carpal tunnel surgery performed on April 22, 2002. On March 15, 2006 it combined OWCP File Nos. xxxxxx739 and xxxxxx674, designating the latter as the master file. OWCP File No. xxxxxx674 has also been combined OWCP File No. xxxxxx674 with files for a traumatic injury, assigned OWCP File No. xxxxxx841 and accepted for a resolved right shoulder and upper arm strain/sprain sustained on August 29, 2007, and an occupational disease claim, assigned OWCP File No. xxxxxx659 and accepted for right carpal tunnel syndrome and right trigger finger. Under OWCP File No. xxxxxx659, appellant underwent an OWCP-authorized right trigger thumb release on April 5, 2013. She was released to limited-duty work in June 2013, and returned to limited-duty work on a part-time basis in September 2013.

In a November 26, 2014 report, Dr. Leo Raisis, a Board-certified orthopedic surgeon, provided work restrictions pertaining to the repetitive use of appellant's upper extremities, which included repetitive gripping, pushing and pulling, and use of the arms at shoulder level or above. He reported that she could lift 5 to 10 pounds continuously and up to 20 pounds intermittently per day. Appellant could also engage in one to two hours of simple grasping and fine manipulation. Dr. Raisis noted that appellant complained of pain when driving a car for a long time due to her upper extremity conditions. The record contains a January 20, 2015 note in which Dr. Raisis advised that appellant should not drive more than 15 miles per day "for work purposes." Other evidence of record indicates that appellant complained of increased pain when driving and wanted a job closer to home.

In a January 23, 2015 letter, an employing establishment official advised OWCP that appellant had provided a medical narrative informing them she could no longer drive more than 15 miles per day for work purposes. He noted that driving was not a requirement of her job and further reported that she provided the documentation to the employing establishment's reasonable accommodations team.

On January 29, 2015 appellant filed a notice of recurrence (Form CA-2a) under the instant claim, alleging that on January 28, 2015 the employing establishment informed her that there was no available work within her restrictions. She indicated that the recurrence was solely due to time lost from work after her supervisor informed her that no work was available within her restrictions.

On February 23, 2015 OWCP requested clarification from the employing establishment as to whether they could no longer accommodate appellant at working two hours per day. The employing establishment responded by advising that appellant provided a limitation that stated that she could not drive more than 15 miles per day for work, but that she lived more than 15 miles from her assigned-duty station. It noted that her modified-duty job was still available for two hours per day, which did not entail any driving, but that management would not allow her to drive to work "in violation of what her doctor wrote."

On February 27, 2015 OWCP advised the employing establishment that appellant's claim had been accepted for carpal tunnel syndrome and that it was reasonable to assume her work-related injury prevented her from driving to work. It requested that the employing establishment consider offering the position within her work restrictions, if available.

On March 6, 2015 OWCP referred appellant, along with a statement of accepted facts (SOAF), for a second opinion examination with Dr. Robert F. Draper, a Board-certified orthopedic surgeon. In a March 23, 2015 report, Dr. Draper noted that the claim was accepted for bilateral carpal tunnel syndrome, bilateral lesion of ulnar nerve, right sprain of shoulder and upper arm, and bilateral trigger finger. He reported that appellant continued to suffer from residuals of her employment-related injuries. Dr. Draper provided work restrictions, which included lifting no more than 10 pounds occasionally and 5 pounds frequently per day, and to avoid excessive use of the upper extremities. He further reported that appellant could drive for a total of one hour each way, to and from work.

By decision dated March 30, 2015, OWCP denied appellant's claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish a recurrence of

disability commencing January 29, 2015 due to a material change/worsening of her accepted employment injuries. It noted that the weight of the medical evidence rested with Dr. Draper.

On April 13, 2015 appellant requested review of the written record before a representative of OWCP's Branch of Hearings and Review. An April 7, 2015 work capacity evaluation (Form OWCP-5c) was submitted from Dr. Stephen L. Hershey, a Board-certified orthopedic surgeon, who reported that she could drive up to 20 miles at a time, allowing for intermittent rest between standing and sitting.

By decision dated September 25, 2015, an OWCP hearing representative affirmed the March 30, 2015 decision.

On June 27, 2016 appellant appealed to the Board.

Appellant continued to submit medical evidence after OWCP issued its September 25, 2015 decision, from attending physicians who discussed her treatment, disability, and work restrictions. On August 1, 2016 OWCP referred appellant, along with a SOAF, for a second opinion examination with Dr. Steven J. Valentino, a Board-certified orthopedic surgeon. In his August 22, 2016 report, Dr. Valentino evaluated appellant and opined that she could perform work on a full-time basis in a sedentary capacity.

By order dated December 20, 2016,[6] the Board set aside OWCP's September 25, 2015 decision finding that the decision was never received by appellant as it was returned to OWCP as undeliverable, and never resent or reissued in a timely manner. The Board remanded the case for OWCP to issue a proper *de novo* decision.

By decision dated February 8, 2017, an OWCP hearing representative conducted a review of the written record and affirmed the March 30, 2015 decision.

On February 21, 2017 appellant appealed the February 8, 2017 decision to the Board.

During the pendency of the appeal before the Board, OWCP referred appellant, along with a SOAF, to Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon, for an impartial medical examination and evaluation to resolve the conflict in medical opinion between Dr. Raisis, appellant's attending physician, and Dr. Valentino, the second opinion physician, pertaining to appellant's work-related restrictions and whether she could drive to and from work for more than 15 miles per day. In a January 25, 2018 medical conflict statement, OWCP requested the impartial medical examiner (IME) provide clarification pertaining to whether appellant required driving restrictions based on the effects of the accepted work-related injuries.

In a March 23, 2018 report, Dr. Schmidt noted issues pertaining to appellant's bilateral carpal tunnel, ulnar nerve dysfunction, right shoulder sprain, acromioclavicular joint (AC) arthritis, and multiple trigger finger problems. He opined that she was capable of working in a full-time, sedentary position. Dr. Schmidt concluded that he agreed with the restrictions imposed by

[6] *Order Remanding Case*, Docket No. 16-1412 (issued December 20, 2016).

Dr. Valentino and would not impose any restrictions on her ability to drive during her commute to and from work.

By decision dated August 9, 2018,[7] the Board set aside the February 8, 2017 decision, finding that OWCP failed to follow its instructions on remand as the decision issued was not a *de novo* decision. The Board remanded the case for OWCP to issue a *de novo* decision as previously ordered by the Board.

By *de novo* decision issued January 8, 2019, OWCP denied appellant's recurrence claim, finding that evidence of record failed to establish disability due to a material change/worsening of her accepted work-related conditions.

On January 22, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an accompanying narrative statement, she argued that her claim was improperly denied. Appellant listed the submission of 30 documents in support of her claim and reiterated that she had filed a recurrence claim because the light-duty position made specifically to accommodate her was withdrawn by the employing establishment on January 29, 2015. She asserted that her supervisor provided no explanation as to why she was denied work and sent home on January 29, 2015. Appellant noted accepting an offer of modified assignment from the employing establishment in late 2014. Following her return to work as a modified clerk, she submitted additional work restrictions from her physician, which limited driving to and from work. Appellant noted that she was working in the modified position for almost two months before her supervisor instructed her that there was no work available within her restrictions.

In support of her claim, appellant submitted documentation from the employing establishment pertaining to her offer of modified assignment and request for reasonable accommodations, correspondence from OWCP, and prior medical reports discussing her work limitations.

On June 12, 2019 an OWCP hearing representative conducted an oral hearing. By decision dated August 9, 2019, OWCP's hearing representative affirmed the January 8, 2019 decision.

On August 19, 2019 appellant requested reconsideration of the August 9, 2019 decision. She noted that both the second opinion physician and IME agreed with her attending physician's prior work restrictions and only disagreed about her capability to drive to and from work. Appellant argued that Dr. Valentino and Dr. Schmidt should not have been afforded the weight of the medical evidence as they only evaluated her on one occasion. She asserted that her attending physician provided the most relevant assessment because he was well acquainted with her detailed medical history and conditions from treating her throughout the years. Appellant further argued that the physicians selected by OWCP are not impartial. She explained that she filed the Form CA-2a due to lost time from work after she was denied work by the employing establishment. Appellant argued that her recurrence claim was filed because of the withdrawal of her light-duty assignment made specifically to accommodate her work-related conditions. She further noted that her work restrictions were permanent and had been in place for over 13 years determined by

[7] *Order Remanding Case*, Docket No. 17-0771 (issued August 9, 2018).

previous functional capacity evaluations. As such, the employing establishment provided her modified job assignments within these restrictions. Appellant referenced Dr. Raisis' prior medical reports, which found that that she had reached maximum medical improvement, that her conditions were permanent in nature, and that she experienced upper extremity pain when driving a car for a long time. She argued that Dr. Raisis never opined that her work restrictions were due to a change/worsening of her accepted work-related conditions. Rather, these restrictions were provided as a result of appellant's initial work-related injuries. Appellant provided supporting documentation for her arguments including correspondence from the employing establishment, the January 28, 2015 Form CA-2a, prior medical reports, and two accepted offers of modified job assignment from the employing establishment.

By decision dated May 5, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

On May 15, 2020 appellant appealed to the Board. By decision dated July 20, 2021,[8] the Board set aside OWCP's May 5, 2020 decision, finding that OWCP improperly denied her request for reconsideration of the merits of her claim. The Board found that on reconsideration appellant submitted a relevant legal argument not previously considered, explaining that she was not alleging a material change/worsening of her work-related conditions, but was rather alleging a recurrence of disability due to withdrawal of her light-duty position.[9] The Board found that this argument was relevant to the underlying issue of whether she had established a recurrence of disability due to withdrawal of a light-duty assignment. The Board remanded the case to OWCP for consideration of the merits of appellant's claim, to be followed by an appropriate merit decision.

On remand, OWCP referred appellant, along with an updated SOAF, for a second opinion examination with Dr. Noubar Didizian, a Board-certified orthopedic surgeon. The December 20, 2021 SOAF addendum discussed appellant's limited-duty work since March 2006. OWCP reported that she stopped working because of her driving restriction on January 28, 2015. It explained that appellant underwent surgery for left trigger thumb release on September 11, 2014, and was subsequently referred to physical therapy and released to light-duty full-time work. On October 29, 2014 appellant accepted a light-duty job and worked two hours per day. OWCP reported that she was restricted to driving only 15 miles per day because of her accepted conditions and could not drive the distance between her home and job site.

In a January 6, 2022 report, Dr. Didizian reviewed appellant's medical history, the SOAF, and discussed findings on examination. He noted that she had accepted a light-duty assignment on October 29, 2014 working two hours per day. Appellant informed him that she last worked on January 28, 2015, because there were no light-duty jobs available within her capacity. Dr. Didizian responded to OWCP's questionnaire and opined that appellant could return to her previous modified-duty job. He explained that she could not return to her original employment

[8] *Order Remanding Case*, Docket No. 20-1188 (issued July 20, 2021).

[9] On appeal, appellant asserted that she had accepted an offer of a modified-duty assignment and worked for two hours per day based on these restrictions prior to the withdrawal of her limited-duty position. She alleged that when she requested additional work restrictions pertaining to her commute, the employing establishment withdrew the current light-duty position she had been assigned.

duties, but could return to modified-duty work, which was the work she was performing when she stopped working.

The record contains a manual adjustment form and a supplemental roll payment showing no deduction of premiums for health benefits insurance (HBI), basic life insurance (BLI), and postretirement basic life insurance (PRBLI) from January 15, 2022 through April 8, 2022.

In a preliminary overpayment determination dated May 16, 2022, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of $1,260.89 for the period January 15 through April 8, 2022, because premiums for HBI, BLI, and PRBLI had not been properly deducted from her compensation payments. It summarized its calculation of the overpayment relating that HBI premiums should have been deducted in the amount of $768.42; BLI premiums should have been deducted in the amount of $58.56; and PRBLI should have been deducted in the amount of $437.51. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing.

By decision dated May 19, 2022, OWCP denied modification of the August 9, 2019 decision regarding appellant's recurrence claim.

On May 23, 2022 OWCP received a Form OWCP-20 requesting that OWCP withdraw $100.00 from future compensation payments until compensation was discontinued or the amount of the overpayment was paid in full. The record reflects that appellant did not contest fact and amount of the overpayment.

On June 15, 2022 appellant requested reconsideration of OWCP's May 19, 2022 decision and presented various arguments in support of her recurrence claim. She asserted that her claim should be accepted for a recurrence of disability because the employing establishment withdrew her established modified-duty assignment.

By decision dated June 22, 2022, OWCP's hearing representative finalized the May 16, 2022 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of $1,260.89 for the period January 15 through April 8, 2022, because premiums for health and life insurance were not deducted from her FECA compensation. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative related that the overpayment was due and payable in full.

By decision dated August 23, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim with respect to the recurrence of disability issue.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury of illness, without an intervening injury of new exposure to the work environment that caused the illness.[10] Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[11] Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[12]

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.[13] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the recurrent disability is causally related to the employment injury.[14] The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.[15] Where no such rationale is present, the medical evidence is of diminished probative value.[16]

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a recurrence of disability due to the employing establishment's withdrawal of her limited-duty assignment on January 29, 2015.

In its May 19, 2022 decision, OWCP acknowledged that the employing establishment withdrew appellant's modified-duty assignment. However, it continued to evaluate her claim for a recurrence using the standard set forth for a material change/worsening of her accepted medical conditions. The Board notes that appellant can establish a recurrence of disability due to

[10] 20 C.F.R. § 10.5(x).

[11] *Id*.

[12] *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004); *see also Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[13] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

[14] *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 318-19 (2008).

[15] *Id*.

[16] *G.L.*, Docket No. 19-0898 (issued December 5, 2019); *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

withdrawal of her light-duty position or because her condition no longer allowed her to perform the modified-duty position.[17]

The record reflects that on October 29, 2014 appellant accepted a part-time limited-duty assignment as an expedition clerk. The physical requirements involved intermittent simple grasping for two hours, intermittent fine manipulation for two hours, and standing for two hours. While appellant's limited-duty assignment did not entail any driving duties, her position was withdrawn by management following her request for accommodations related to her work commute. The employing establishment contended that the October 29, 2014 position remained available,[18] but acknowledged that management would not allow appellant to work in the position, thereby establishing withdrawal of her light-duty assignment.[19] Furthermore, the most recent January 6, 2022 OWCP referral examination by Dr. Didizian provides continued support for appellant's limitations as the physician opined that she could not return to her original employment duties, but could return to her October 29, 2014 limited-duty assignment. The Board finds that OWCP improperly denied appellant's recurrence claim as the evidence of record establishes that the light-duty assignment, which had been made specifically to accommodate her physical limitations due to her accepted work injury was withdrawn.[20]

The Board has held that withdrawal of a light-duty job formulated to comply with an employee's work-related medical limitations can constitute a recurrence of disability.[21] In the present case, the employing establishment acknowledged that appellant's light-duty job was withdrawn by management, despite the position remaining available. The position was not withdrawn due to misconduct, performance, or reduction-in-force.[22] The Board, therefore, finds that appellant sustained an employment-related recurrence of total disability when her work was withdrawn by the employing establishment on January 29, 2015.[23]

LEGAL PRECEDENT -- ISSUE 3

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.[24] When an overpayment has been made to an individual because of an error of fact or law, adjustment shall

[17] *See A.W.*, Docket No. 18-0589 (issued May 14, 2019).

[18] *F.K.*, Docket No. 11-0141 (issued September 7, 2011).

[19] *J.T.*, Docket No. 18-0789 (issued December 7, 2018).

[20] *See L.F.*, Docket No. 16-0872 (issued April 17, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[21] *See J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017); *J.F.*, 58 ECAB 124 (2006).

[22] *M.F.*, Docket No. 14-1326 (issued April 26, 2017).

[23] *Id.*; *see also K.S.*, Docket No. 08-2105 (2009). In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[24] 5 U.S.C. § 8102(a).

be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.[25]

Under the Federal Employees Health Benefits (FEHB) program and/or Federal Employees' Group Life Insurance (FEGLI) plan, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.[26] An employee entitled to disability compensation may continue his or her health benefits under the FEHB program. If an employee was enrolled in a FEGLI plan at the time he or she became eligible to receive wage-loss compensation, deductions for HBI and/or life insurance premiums will be withheld from the employee's compensation benefits.[27] The Office of Personnel Management (OPM), 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.[28] 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.[29]

ANALYSIS -- ISSUE 3

The Board finds that appellant received an overpayment of compensation in the amount of $1,260.89 for the period January 15 through April 8, 2022, for which she was without fault, resulting from failure to deduct appropriate health and life insurance premiums.

In a preliminary overpayment determination dated May 16, 2022, OWCP notified appellant of its preliminary finding that she received an overpayment of compensation in the amount of $1,260.89 because HBI, BLI, and PRBLI premiums had not been properly deducted from her compensation payments for the period January 15 through April 8, 2022. It provided payment documents and worksheets explaining how it calculated the $1,260.89 overpayment.[30] OWCP summarized its calculation of the overpayment relating that HBI premiums should have been deducted in the amount of $768.42; BLI premiums should have been deducted in the amount of $58.56; and PRBLI should have been deducted in the amount of $437.51. As noted, when an under withholding of HBI or life insurance premiums occurs, the entire amount is deemed an

[25] 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

[26] 5 U.S.C. § 8702(a). *See E.J.*, Docket No. 15-1734 (issued April 12, 2016).

[27] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15 (February 2013).

[28] 5 C.F.R. § 890.502(a)(1).

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

[30] *Id*.

overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.[31]

The Board finds 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 PRBLI premiums from January 15 through April 8, 2022, appellant received an overpayment of compensation in the amount of $1,260.89 during this period.[32]

LEGAL PRECEDENT -- ISSUE 4

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.[33]

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.[34]

ANALYSIS -- ISSUE 4

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.[35] Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.[36]

In its preliminary overpayment determination dated May 16, 2022, 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

[31] *D.B.*, Docket No. 19-1742 (issued March 22, 2021).

[32] *C.W.*, Docket No. 21-0943 (issued February 17, 2023).

[33] 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

[34] 20 C.F.R. § 10.438.

[35] *Id*. at § 10.436.

[36] *Supra* note 34.

within 30 days. Appellant, however, did not submit any 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.[37]

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.[38]

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that she sustained a recurrence of disability commencing January 29, 2015 due to her accepted employment injuries. The Board also finds that she received an overpayment of compensation in the amount of $1,260.89, for the period January 15 through April 8, 2022, for which she was without fault, resulting from failure to deduct appropriate health and life insurance premiums, and that OWCP properly denied waiver of recovery of the overpayment.

[37] *T.W.*, Docket No. 21-0130 (issued October 22, 2021).

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

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2022 decision of the Office of Workers' Compensation Programs regarding the recurrence of disability claim is reversed. Accordingly, the August 23, 2022 denial of appellant's request for reconsideration of the merits of her claim is rendered moot.[39] The June 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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

[39] *See K.P.*, Docket No. 21-1065 (issued March 30, 2022); *B.N.*, Docket No. 17-0787 (issued July 6, 2018).