

² The Board notes that following the March 4, 2025 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.*

wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$832.27 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 14, 2022 appellant, then a 43-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety and depression due factors of her federal employment. She indicated that she was constantly followed and harassed by a female coworker and verbally assaulted and threatened by a male coworker. Appellant noted that she first became aware of her condition on September 27, 2022, and realized its relation to her federal employment on December 14, 2022. She stopped work on December 14, 2022. OWCP accepted the claim for generalized anxiety disorder and major depressive disorder and later expanded its acceptance of the claim to include tension-type headaches and post-traumatic stress disorder. It paid appellant wage-loss compensation for partial disability on the supplemental rolls, effective December 7, 2022.

On January 12, 2024 appellant filed a claim for compensation (Form CA-7) for disability from work commencing August 7, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant was covered under health benefit code 474 (coverage for self only).

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls, effective November 27, 2023, and on the periodic rolls, effective March 24, 2024.

Appellant returned to part-time modified-duty work on July 13, 2024.

On September 13, 2024 OWCP received a copy of a signed health benefits election form dated November 5, 2023, which recorded that appellant changed her health insurance enrollment code from 474 (coverage for self only) to 476 (coverage for self plus one), effective November 5, 2023.

In an October 7, 2024 manual adjustment form, OWCP determined that an overpayment of compensation occurred because it improperly deducted health insurance premiums based upon health insurance code 474 (coverage for self only) instead of code 476 (coverage for self plus one). The form indicated that, during the relevant period November 27, 2023 through July 12, 2024, the health insurance cost deducted for health insurance code 474 was \$1,242.85 and the correct amount that should have been deducted for health insurance code 476 was \$2,701.25, resulting in an overpayment of \$1,458.40.

In a preliminary overpayment determination dated December 5, 2024, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$1,458.40, for the period November 27, 2023 through July 12, 2024, because health insurance premiums had not been properly deducted from her compensation payments. It noted that she changed her health benefit code from 474 to 476, a more expensive benefit, effective November 5, 2023, and that she had received compensation benefits for total disability from November 27, 2023 through July 12, 2024. OWCP summarized its calculation of the overpayment, relating that health insurance premiums were deducted in the amount of \$1,242.85 but should have been deducted in the amount of \$2,701.25, for a total under withholding of

\$1,458.40. It also advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. OWCP 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. It requested that appellant complete and return a financial information questionnaire (Form OWCP-20) within 30 days. OWCP also requested that she 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. No response was received.

By decision dated March 4, 2025, OWCP finalized the December 5, 2024 preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount \$1,458.40 for the period November 27, 2023 through July 12, 2024, for which she was without fault, because OWCP failed to properly deduct health insurance premiums from her FECA wage-loss compensation. OWCP denied waiver of recovery of the overpayment and required recovery by deducting \$832.27 from her continuing compensation payments every 28 days.³

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 his or her duty.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.⁵ 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.⁶

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employees Health Benefits (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.⁷ The Board has recognized that, when an under withholding of health benefit premiums is discovered,

³ On January 26, 2025 appellant filed a Form CA-7 for disability from work, commencing January 11, 2025. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls, effective January 11, 2025 and on the periodic rolls, effective January 26, 2025. The net compensation amount was \$3,329.06, every 28 days.

⁴ *Supra* note 1 at § 8102(a).

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

⁶ *Supra* note 1 at § 8129(a).

⁷ *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *James Lloyd Otte*, 48 ECAB 334 (1997).

the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,458.40 for the period November 27, 2023 through July 12, 2024, for which she was without fault, because health insurance premiums had not been properly deducted from her FECA wage-loss compensation payments.

In a preliminary overpayment determination dated December 5, 2024, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$1,458.40, for the period November 27, 2023 through July 12, 2024, because health insurance premiums had not been properly deducted from her compensation payments. It noted that she changed her health benefit code from 474 (coverage for self only) to 476 (coverage for self plus one), effective November 5, 2023, and received compensation benefits from November 27, 2023 through July 12, 2024. OWCP explained its calculation of the overpayment, relating that health insurance premiums were deducted in the amount of \$1,242.85 when they should have been deducted in the amount of \$2,701.25, for a total under withholding of \$1,458.40. As noted, when an under withholding of health 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.⁹

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 health insurance premiums from November 27, 2023 through July 12, 2024, appellant received an overpayment of compensation in the amount of \$1,458.40 during this period.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that adjustment or recovery by the United States may not be made when 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.¹¹ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

⁸ *Supra* note 1 at § 8702(a); *I.J.*, Docket No. 1672 (issued March 10, 2020).

⁹ *Id.*

¹⁰ *C.W.*, Docket No. 21-0943 (issued February 17, 2023).

¹¹ 5 U.S.C. § 8129(b).

¹² 20 C.F.R. § 10.436.

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary, because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹³ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁵

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ 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. The information is also used to determine the repayment schedule, if necessary.¹⁷ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

ANALYSIS -- ISSUE 2

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

As OWCP found appellant without fault in the creation of the \$1,458.40 overpayment for the period November 27, 2023 through July 12, 2024, 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.¹⁹

In its preliminary overpayment determination dated December 5, 2024, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial information. Appellant did not submit a completed Form OWCP-20 or otherwise submit the financial

¹³ *Id.* at § 10.436(a)-(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(3); *see also B.M.*, Docket No. 23-0891 (issued January 30, 2024); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁵ 20 C.F.R. § 10.437(a)-(b).

¹⁶ *Id.* at 10.438(a).

¹⁷ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Supra* note 16 at § 10.438(b); *see G.S.*, Docket No. 20-1580 (issued March 19, 2021).

¹⁹ *Id.* at § 10.436.

information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Appellant had the responsibility to provide financial information to OWCP but failed to do so.²⁰ As she did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²² Section 10.441(a) of the regulations provides:

"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 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 any hardship."²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$832.27 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information regarding her income, expenses, and assets prior to the final overpayment decision. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁵

²⁰ *Supra* note 16 at § 10.438; *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

²¹ *See A.P.*, Docket No. 24-0943 (issued December 10, 2024); *E.A.*, Docket No. 24-0810 (issued September 26, 2024).

²² *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²³ 20 C.F.R. § 10.441(a).

²⁴ *See P.S.*, Docket No. 25-0258 (issued February 24, 2025); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁵ *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$832.27 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,458.40 for the period November 27, 2023 through July 12, 2024, for which she was without fault, because health insurance premiums were not properly deducted from her FECA compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$832.27 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2025
Washington, DC

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

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

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