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<b>C.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0450</b>
	)	<b>Issued: August 8, 2025</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Federal Way, WA, Employer</b>	)	
	)	

*Christina Faliero, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

## DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge  
 JANICE B. ASKIN, Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On March 27, 2024 appellant, through counsel, filed a timely appeal from a March 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 11, 2024 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,393.24, for the period November 15, 2021 through February 24, 2023, for which she was without fault, because health and life insurance premiums had not been deducted from her FECA compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$587.18 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On October 1, 2021 appellant, then a 49-year-old sales service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2021 she strained her back when moving bags while in the performance of duty. She stopped work that same day.

OWCP accepted the claim for strain of muscle, fascia, and tendon of the lower back, and left side sciatica. It paid appellant wage-loss compensation on the supplemental rolls as of November 15, 2021.

In a claim for compensation (Form CA-7) dated November 23, 2021, an employing establishment official indicated that on the day that appellant's pay was stopped as she was not enrolled in health benefits under the Federal Employees Health Plan (FEHBP) and was not enrolled in basic life insurance (BLI) or optional life insurance (OLI) plans.

In an initial payment memorandum dated January 24, 2022, OWCP noted that health and life insurance deductions were not applicable.

A memorandum of telephone call (Form CA-110) dated May 17, 2023 indicated that appellant was informed by OWCP that deductions had not been made for health or life insurance as a CA-7 form dated November 23, 2021 and a payrate memorandum reflected that appellant did not carry health or life insurance. A Form CA-110 dated May 22, 2023 indicated that OWCP informed appellant that deductions were not made for her health insurance based on information received from the employing establishment. OWCP advised appellant that there was no further action it could take to assist her regarding this matter.

In a Form CA-7 dated July 20, 2023, the employing establishment indicated that appellant stopped work on October 1, 2021, and that she was not covered for health benefits, BLI or OLI. In CA-7 forms dated August 2, 15 and 29, 2023, the employing establishment indicated that on the day that appellant's pay was stopped she was not enrolled in a health benefits plan under FEHBP, but that she was enrolled in BLI.

OWCP paid appellant on the periodic rolls effective August 13, 2023.

In an August 28, 2023 Form CA-110, OWCP questioned the employing establishment as to whether appellant had elected health insurance, BLI or OLI. The employing establishment confirmed that appellant currently had no health insurance, BLI or OLI. During the telephone call, the employing establishment indicated that appellant had been enrolled in a Kaiser health insurance plan on September 30, 2021, the date of injury. OWCP related that since appellant was never paid

on the periodic rolls, the health insurer may have terminated benefits as no transfer action was completed by OWCP.

An undated FECA health benefits transmittal sheet (CA-73) related that the transfer effective date was November 15, 2021, the first date that OWCP commenced consecutive payments, with health benefit premium deductions, whether on the daily or periodic rolls. OWCP requested enrollment from the employing establishment or transfer.

In an August 29, 2023 Form CA-110 with appellant, OWCP explained that they were confirming her health benefits enrollment. Appellant confirmed that she was enrolled in a health insurance plan under United Healthcare (Code KT3), and not Kaiser, on the date of injury. She stated that she did not change or terminate her health insurance coverage. OWCP also noted that the employing establishment was still unable to confirm whether appellant had BLI.

In an August 29, 2023 Form CA-110, OWCP explained to the employing establishment that appellant confirmed that she was enrolled in United Healthcare (Code KT3), on the date of injury and that she did not cancel, change, or terminate coverage. She also received a bill from the employing establishment for premiums due, and she was confident that was her coverage. OWCP requested that appellant's health insurance be transferred in. The employing establishment indicated that it was unable to confirm whether appellant had BLI, and that it would check appellant's paper file.

In an August 29, 2023 Form CA-110, the employing establishment confirmed that appellant had health insurance and BLI on the date of injury.

In a letter dated August 30, 2023, OWCP notified the employing establishment that it was deducting premiums for health benefits from appellant's compensation, effective November 15, 2021. It requested that the employing establishment forward a copy of the employee's health benefit enrollment. OWCP also noted that an employee was eligible for health benefits deductions while in receipt of compensation benefits if the employee was enrolled in a health benefit plan at the time of injury. It requested that the employing establishment furnish OWCP with copies of every notice of change in health benefits enrollment (Standard Form (SF) 2810) and health benefits election form (SF 2809) on file beginning with her initial enrollment in a health benefit plan.

An August 30, 2023 Form SF 2810 indicated that OWCP would transfer in appellant's health insurance enrollment, effective November 15, 2021.

In a Form CA-110 dated October 10, 2023, appellant advised OWCP that she still had no health insurance coverage as of that date. An October 12, 2023 Form CA-110 indicated that OWCP called appellant and informed her that her health insurance had been reinstated.

By notice dated December 14, 2023, OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$11,393.24, because health insurance, and BLI premiums had not been deducted from her compensation payments for the period November 15, 2021 through February 24, 2023. OWCP provided a computation of the overpayment. It noted that the health insurance premiums that should have been paid during the period November 15, 2021 through January 1, 2022 were at the bi-weekly rate of \$251.46; from January 2 through December 31, 2022 were at the bi-weekly rate

of \$333.58; and from January 1 through February 24, 2023 were at the bi-weekly rate of \$395.51. OWCP calculated that the unpaid amounts were for the period November 15, 2021 through January 1, 2022 at the daily rate of \$17.96 x 48 days = \$862.15; for the period January 2 through December 31, 2022 at the daily rate \$23.83 x 364 days = \$8,673.08; and for the period January 1 through February 24, 2023 at the daily rate \$28.25 x 55 days = \$1,553.79, which amounted to a total of \$11,089.02 in unpaid health insurance premiums during the period November 15, 2021 through February 24, 2023. It noted that there also were unpaid premiums for BLI in the amount of \$304.22 during the same period, and that the total of the unpaid premiums for health insurance of \$11,089.02, plus the BLI amount of \$304.22, equaled \$11,393.24.

OWCP advised appellant that she was without fault in the creation of the overpayment and requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses within 30 days. It also notified her that within 30 days, she could request a final decision based on the written evidence, or a precoupment hearing.

In a letter dated January 21, 2024, counsel for appellant requested waiver of recovery of the overpayment as it occurred through no fault of appellant. She indicated that additional evidence would be submitted to demonstrate appellant's limited finances.

On January 22, 2024 OWCP received appellant's Form OWCP-20. Appellant listed her total monthly income as \$6,077.00, her total monthly expenses as \$6,643.91, and total assets of \$172.55. She did not submit any supporting documentation.

By decision dated March 11, 2024, OWCP finalized the December 14, 2023 preliminary overpayment determination. It found that the evidence of record was sufficient to establish that an overpayment of compensation in the amount of \$11,393.24 had been created for the period November 15, 2021 through February 24, 2023, because premiums for health insurance and BLI were not deducted from appellant's FECA compensation. OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as it had not received any supporting financial documents from appellant. It determined that the overpayment would be recovered by deducting \$587.18 from her continuing compensation payments every 28 days.<sup>4</sup>

### **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.<sup>5</sup> 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

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<sup>4</sup> OWCP explained that \$587.18 was determined based upon 25 percent of appellant's net compensation amount of \$2,348.70.

<sup>5</sup> 5 U.S.C. § 8102(a).

law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.<sup>6</sup>

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.”<sup>7</sup>

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.”<sup>8</sup>

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.<sup>9</sup> An establishment that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>10</sup> 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.<sup>11</sup>

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.<sup>12</sup> The coverage for BLI is effective unless

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<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> *Id.* at § 890.502(a)(1).

<sup>8</sup> *Id.* at § 890.502(c).

<sup>9</sup> *Id.* at § 890.502(b)(1).

<sup>10</sup> *Id.* at § 890.502(d).

<sup>11</sup> *T.M.*, Docket No. 20-1085 (issued December 31, 2020); *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>12</sup> 5 U.S.C. § 8702(a).

waived,<sup>13</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>14</sup>

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

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$11,089.02, for which she was without fault, as health insurance premiums were not deducted during the period November 15, 2021 through February 24, 2023.

While documentation of record initially reported that appellant was not enrolled in a health benefits plan as of the date of injury, the employing establishment and appellant confirmed that appellant was enrolled in United Healthcare (Code KT3) on the date of injury. In a letter dated August 30, 2023, OWCP notified the employing establishment that it was deducting premiums for health benefits from appellant's compensation, effective November 15, 2021. The Board thus finds that fact of overpayment due to OWCP's failure to deduct health insurance premiums has been established.

As previously noted, when an under withholding of health insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM when the error is discovered.<sup>15</sup> The Board has reviewed OWCP's detailed calculations regarding deductions that should have been made for health insurance premiums from November 15, 2021 through February 24, 2023 and finds that an overpayment of compensation in the amount of \$11,089.02 was created for the period November 15, 2021 through February 24, 2023.

The Board further finds, however, that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$304.22 for the period November 15, 2021 through February 24, 2023, with regard to deductions for life insurance premiums.

The Board notes that the record does not contain a form signed by appellant confirming her life insurance election. The Board has previously held that OWCP must document appellant's election of life insurance coverage in order to establish the fact of overpayment of compensation.<sup>16</sup>

Therefore, the Board finds that the overpayment amount of \$304.22 regarding deduction of premiums for BLI, has not been established.

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

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

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<sup>13</sup> *Id.* at § 8702(b).

<sup>14</sup> *Id.* at § 8707.

<sup>15</sup> *Id.*

<sup>16</sup> See *K.T.*, Docket No. 23-0205 (issued June 28, 2023); *J.P.*, Docket No. 18-1194 (issued April 28, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup> 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.<sup>18</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>19</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>20</sup>

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>21</sup>

OWCP's regulations further provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>22</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>23</sup>

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

The Board finds that OWCP properly denied waiver of recovery of the overpayment in the amount of \$11,089.02.

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<sup>17</sup> 5 U.S.C. § 8129(a)-(b).

<sup>18</sup> *L.S.*, 59 ECAB 350 (2008).

<sup>19</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>20</sup> *Id.* at Chapter 6.400.4a(3) (September 2020).

<sup>21</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>22</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>23</sup> *Id.* at § 10.438(b).

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.<sup>24</sup> In its preliminary determination dated December 14, 2023, OWCP explained the importance of providing the completed Form OWCP-20 recovery questionnaire and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days.

On January 22, 2024 OWCP received appellant's Form OWCP-20. Appellant listed her total monthly income as \$6,077.00, her total monthly expenses as \$6,643.91, and total assets of \$172.55. However, she did not submit any supporting documentation. Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility of waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>25</sup>

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

20 C.F.R. § 10.441 of OWCP's regulations provides in pertinent part that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>26</sup>

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. 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.<sup>27</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$587.18 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. However, appellant did not provide financial documentation to support her income and expenses prior to the final March 11, 2024 overpayment decision. Where compensation is being paid on the periodic rolls, the debt repayment rate should be set at 25 percent

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<sup>24</sup> *Id.* at. § 10.436.

<sup>25</sup> See *J.A.*, Docket No. 19-1946 (issued July 13, 2020); see also *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>26</sup> *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>27</sup> *Supra* note 19 at Chapter 6.500.8c(1) (September 2018).



of the net compensation amount until the balance of the overpayment is paid in full.<sup>28</sup> As OWCP determined that appellant's net compensation amount is \$2,348.70, the Board finds that OWCP reasonably required recovery by deducting \$587.18 from her continuing compensation payments every 28 days.

### **CONCLUSION**

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$11,089.02, for which she was without fault, as health insurance premiums were not deducted during the period November 15, 2021 through February 24, 2023. The Board further finds, however, that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$304.22 for the period November 15, 2021 through February 24, 2023, with regard to deductions for life insurance premiums. The Board also finds that OWCP properly denied waiver of recovery of the overpayment regarding health insurance premiums, and properly required recovery of the overpayment by deducting \$587.18 from appellant's continuing compensation payments every 28 days.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 8, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>28</sup> *Id.*