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A.F., Appellant)	
)	
and)	Docket No. 25-0192
)	Issued: February 4, 2025
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
MIKE MONRONEY AERONAUTICAL)	
CENTER, Oklahoma City, OK, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On December 19, 2024 appellant filed a timely appeal from a December 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

² The Board notes that following the December 17, 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.*

fault, because health insurance premiums were not properly deducted from his 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 \$50.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 11, 2021, appellant, then a 37-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2021 he injured his pelvis, abdomen, neck, and back when he was pinned by a forklift against a wall and charging station while in the performance of duty. He stopped work on the date of injury. OWCP accepted the claim for mesenteric contusion; crushing injury of abdomen, lower back, and pelvis; strain of muscles of the left forearm; post-traumatic stress disorder; neurogenic bladder; cervical sprain; cervical disc displacement of the occipito-atlanto-axial region; cervical disc disorder at C5-C6 with radiculopathy; and hemiplegia and hemiparesis following unspecified cerebrovascular disease affecting the left dominant side. It paid appellant wage-loss compensation on the supplemental rolls as of June 20, 2021, and on the periodic rolls as of November 30, 2022.

On August 21, 2024, OWCP received a copy of a signed health benefits election form dated January 14, 2024, which recorded that appellant changed his health insurance enrollment code from Z24 to 256, effective January 14, 2024.

As of August 11, 2024, OWCP began deducting premiums for enrollment code 256 from appellant's wage-loss compensation in the amount of \$251.94 every 28 days.

In an August 22, 2024 overpayment calculation memorandum, OWCP found that appellant had received an overpayment of compensation in the amount of \$1,017.06 for the period January 14 through August 10, 2024 as it had not deducted health insurance premiums under the correct enrollment code. It noted that during the period January 14 through August 10, 2024, it had deducted health insurance premiums under enrollment code Z24 in the amount of \$865.35 when it should have deducted health benefit premiums under enrollment code 256 in the amount of \$1,882.41, resulting in an overpayment of \$1,017.06 due to the under withholding of health insurance premiums.

In a preliminary overpayment determination dated October 17, 2024, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$1,017.06, for the period January 14 through August 10, 2024, because health insurance premiums had not been properly deducted from his compensation payments. It noted that he changed his health insurance enrollment code from Z24 to 256 effective January 14, 2024 on a health benefits election form and explained that health insurance benefit code 256 was more expensive than health insurance benefit code Z24. OWCP also advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It provided him with an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete and return a financial information questionnaire (Form OWCP-20) within 30 days. It also requested that he 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. OWCP advised appellant that it would deny waiver of

recovery of the overpayment if he failed to furnish the requested financial information within 30 days.

On October 24, 2024, appellant requested a decision based on the written evidence and indicated that he was requesting waiver of recovery of the overpayment.

On November 12, 2024, OWCP again requested that appellant complete and return Form OWCP-20 with supporting financial documentation within 30 days.

On November 26, 2024, OWCP received a completed Form OWCP-20 signed by appellant on October 24, 2024, which indicated that his monthly income totaled \$3,180.00 and his monthly expenses totaled \$3,031.00. Appellant also reported a total of \$778.00 in assets. He did not provide any supporting financial documentation.

By decision dated December 17, 2024, OWCP finalized the October 17, 2024 preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount \$1,017.06 for the period January 14 through August 10, 2024, for which he was without fault, because OWCP failed to properly deduct health insurance premiums from his FECA wage-loss compensation. OWCP denied waiver of recovery of the overpayment and required recovery by deducting \$50.00 from appellant's continuing compensation payments, every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.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.⁴ 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.⁵

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.⁶ The Board has recognized that, when an under withholding of health benefit premiums is discovered, the entire amount is deemed an

³ *Supra* note 1 at § 8102(a).

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

⁵ *Id.* at § 890.502(a)(1).

⁶ *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *James Lloyd Otte*, 48 ECAB 334 (1997).

overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,017.06 for the period January 14 through August 10, 2024, for which he was not at fault, resulting from OWCP's failure to deduct appropriate health insurance premiums.

In a preliminary overpayment determination dated October 17, 2024, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$1,017.06 because health insurance premiums had not been properly deducted from his compensation payments for the period January 14 through August 10, 2024. It noted that he changed his health insurance enrollment code from Z24 to 256 effective January 14, 2024 on a health benefits election form and explained that health insurance benefit code 256 was more expensive than health insurance benefit code Z24. OWCP provided payment documents and worksheets explaining how it calculated the \$1,017.06 overpayment. 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.⁸

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 health insurance premiums from January 14 through August 10, 2024, appellant received an overpayment of compensation of \$1,017.06 during this period.⁹

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.¹⁰ 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.¹¹

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

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

⁸ *Id.*

⁹ *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).

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.436.

not exceed a specified amount as determined by OWCP.¹² An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

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.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷

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 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.¹⁸ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁹

In its preliminary overpayment determination dated October 17, 2024 and its letter dated November 12, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. It advised appellant that it

¹² 20 C.F.R. § 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).

¹³ *Id.* at Chapter 6.400.4.a(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).

¹⁴ 20 C.F.R. § 10.437(a)-(b).

¹⁵ *Id.* at 10.438(a).

¹⁶ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438(b); *see G.S.*, Docket No. 20-1580 (issued March 19, 2021).

¹⁸ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁹ 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant submitted a completed OWCP Form-20 dated October 24, 2024, which indicated that his monthly income totaled \$3,180.34 and his monthly expenses totaled \$3,031.00. Based on his reported expenses and income, his household income exceeded his expenses by more than \$50.00 per month. As appellant's income exceeds expenses by more than \$50.00, the Board finds that OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA.²⁰

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.²¹ Accordingly, OWCP properly denied waiver of recovery of the overpayment.²²

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.²³ 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.”²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation payments every 28 days.

In setting the recovery rate at \$50.00, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources

²⁰ *Supra* note 13.

²¹ *L.E.*, Docket No. 22-0203 (issued March 17, 2023); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²² *M.T.*, Docket No. 24-0303 (issued April 25, 2024).

²³ *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²⁴ 20 C.F.R. § 10.441(a).

sufficient for more than ordinary needs. Thus, it did not abuse its discretion in setting the rate of recovery.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,017.06 for the period January 14 through August 10, 2024, for which he was without fault, because health insurance premiums were not deducted from his 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 \$50.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²⁵ See *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).