

<sup>2</sup> The Board notes that, following the May 7, 2025 decision, OWCP received additional evidence. 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.*

insurance premiums from his wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$909.48 from appellant's continuing compensation benefits every 28 days; (4) whether appellant has met his burden of proof to establish entitlement to an increased schedule award; (5) whether OWCP properly denied appellant's request for concurrent payment of schedule award benefits and wage-loss compensation benefits for total disability due to his accepted employment injury; and (6) whether OWCP properly denied appellant's request for a lump-sum payment of his schedule award.

### **FACTUAL HISTORY**

This case was previously before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 31, 2012 appellant, then a 56-year-old printing reprographics specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained dilated nonischemic cardiomyopathy due to factors of his federal employment including exposure to strong chemical odors, poor ventilation, and chemical spills. He noted that he first became aware of his condition on August 31, 2006, and realized its relation to his federal employment on October 30, 2009. Appellant stopped work on December 11, 2009 and has not returned. OWCP accepted the claim for dilated cardiomyopathy and later expanded its acceptance of the claim to include other hereditary and idiopathic neuropathies, bilateral chronic kidney disease, and end stage renal disease. It paid appellant wage-loss compensation for total disability on the supplemental rolls effective May 20, 2010 and on the periodic rolls effective August 21, 2016.

On August 1, 2016 appellant elected to receive FECA wage-loss compensation benefits in lieu of disability annuity benefits from the Office of Personnel Management (OPM).

In a signed Continuation of Life Insurance Coverage as an Annuitant or Compensation under Federal Employees' Group Life Insurance (FEGLI) Program (SF-2818) dated March 2, 2010, appellant checked a box marked "Yes" that he wished to elect basic life insurance (BLI) with 75 percent reduction and optional life insurance (OLI) Option B with two multiples and full reduction.<sup>4</sup>

On January 8, 2021 appellant elected to freeze Option B multiples at the value as of age 65.

On January 29, 2021 OPM advised OWCP that, as a compensation, appellant was eligible to continue FEGLI coverage. The final base salary on which FEGLI was based was \$70,860.00. OPM requested that OWCP deduct premiums using Code K0 for BLI and Option B with two multiples and no reduction. It advised that appellant's postretirement election was a 75

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<sup>3</sup> Docket No. 15-350 (issued April 15, 2015).

<sup>4</sup> OWCP began making deductions from appellant's compensation benefits for OLI, effective May 20, 2010.

percent reduction with a commencing date of May 19, 2010. OPM indicated that a “copy of his freeze form for Option B-2X is attached showing he has it under incontestability.”

OWCP stopped deducting OLI premiums on January 31, 2021.

On February 17, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated April 25, 2023, OWCP denied appellant’s schedule award claim.

On January 24, 2024 appellant requested reconsideration of OWCP’s April 25, 2023 decision.

On March 13, 2024 OWCP referred appellant, the medical record, and statement of accepted facts (SOAF) to Dr. Eric Kraut, a Board-certified critical care surgeon, for a second opinion evaluation.

In a report dated April 9, 2024, Dr. Kraut noted his review of the medical records and SOAF and applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>5</sup> to his examination findings. He opined that appellant had 65 percent whole person impairment due to urinary tract disease.

On April 18, 2024 OWCP referred the medical record, including Dr. Kraut’s April 9, 2024 report, and a SOAF to Dr. Herbert White, a Board-certified occupational medicine specialist serving as a district medical adviser (DMA), for review and an opinion regarding appellant’s permanent impairment.

In a report dated May 6, 2024, Dr. White indicated that appellant’s permanent impairment could not be rated as he had not reached maximum medical improvement (MMI).

By decision dated June 5, 2024, OWCP denied modification of the April 25, 2023 decision.

OWCP continued to receive evidence. In a narrative medical report dated August 2, 2024, Dr. Raymond Bass, a Board-certified internist and nephrologist, diagnosed end stage chronic kidney disease due to nephrotoxicity of anti-rejection medication after receiving a heart transplant for the accepted August 31, 2006 employment injury. He opined that appellant had reached MMI and noted that he had lost 96 percent of the function of each of his kidneys.

On August 30, 2024 appellant, through then-counsel, requested reconsideration of OWCP’s May 9, 2024 decision.

On September 4, 2024 OWCP referred the medical record, including Dr. Bass’s August 2, 2024 report, and SOAF to Dr. Michael Minev, a Board-certified internist serving as a DMA, for review and an opinion regarding appellant’s permanent impairment.

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

OWCP reinstated deductions for OLI premiums on October 6, 2024.

In a November 7, 2024 manual adjustment form, OWCP advised that it should have withheld OLI premiums of \$6,844.61 for the period January 3, 2021 through October 5, 2024. It determined that it had withheld no premiums for OLI during this time.

In a November 11, 2024 report, Dr. Minev opined that appellant had 100 percent permanent impairment of his right kidney and 100 percent permanent impairment of his left kidney.

By decision dated November 26, 2024, OWCP vacated the June 5, 2024 decision regarding appellant's schedule award.

By decision dated December 4, 2024, OWCP granted appellant a schedule award for 100 percent permanent impairment of the right kidney and 100 percent permanent impairment of the left kidney. It explained that a claimant could not receive compensation for total disability and compensation for a schedule award for concurrent date ranges for the same injury. OWCP noted a date of MMI of August 2, 2024 but indicated that the starting date of the schedule award was December 1, 2024 as appellant had already received wage-loss compensation through November 30, 2024. The award ran for 312 weeks from December 1, 2024 through November 23, 2030.

On December 17, 2024 appellant, through then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with respect to the December 4, 2024 decision.

On December 31, 2024 appellant completed a Form EN-1032 and indicated that he had not worked for any employer during the past 15 months. He also reported that he was not in receipt of OPM or Social Security Administration (SSA) disability or retirement benefits.

In a preliminary overpayment determination dated January 2, 2025, OWCP found that appellant had received an overpayment of compensation in the amount of \$6,844.61 because it had failed to deduct premiums for OLI from his compensation payments for the period January 3, 2021 through October 5, 2024. It summarized its calculation of the overpayment. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant 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. No response was received.

By decision dated February 28, 2025, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$6,844.61 for the period January 3, 2021 through October 5, 2024. It found that he was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment. OWCP determined that the overpayment would be recovered by deducting \$909.48 from appellant's continuing compensation every 28 days.

By letter dated April 7, 2025, appellant, through then-counsel, amended the December 17, 2024 request for an oral hearing to a request for review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an April 29, 2025 letter, appellant's then-counsel argued that appellant was entitled to receive payment of schedule award benefits for the loss of use of his kidneys concurrent with payment of wage-loss compensation benefits for total disability for his accepted August 31, 2006 cardiac condition. In an enclosed undated statement, appellant also requested concurrent payment, or, in the alternative, a lump-sum payment of his schedule award benefits.

By decision dated May 7, 2025, OWCP's hearing representative denied modification of OWCP's December 4, 2024 decision. The hearing representative also denied appellant's request for payment of schedule award benefits concurrent with payment of wage-loss benefits, or in the alternative, a lump-sum payment of his schedule award. The hearing representative found that the evidence did not establish that a lump-sum payment was in appellant's best interest.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>9</sup> The coverage for basic life insurance is effective unless waived,<sup>10</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>11</sup> Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.<sup>12</sup> Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>13</sup> however, the employee is responsible

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> *Id.* at § 8129(a).

<sup>9</sup> *Id.* at § 8702(a).

<sup>10</sup> *Id.* at § 8702(b).

<sup>11</sup> *Id.* at § 8707.

<sup>12</sup> *Id.* at § 8706.

<sup>13</sup> *Id.* at § 8707(b)(2).

for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.<sup>14</sup>

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).<sup>15</sup>

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.<sup>16</sup> Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.<sup>17</sup>

When an under-withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>18</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,844.61 for the period January 3, 2021 through October 5, 2024, for which he was without fault, because OWCP failed to deduct OLI premiums from his FECA compensation.

OWCP did not deduct OLI premiums from appellant's wage-loss compensation benefits for the period January 3, 2021 through October 5, 2024. As such, it calculated the amount of the resulting overpayment as \$6,844.61. The record contains the compensation payment record, as

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<sup>14</sup> *Id.* at § 8706(b)(3)(B). See *Edward J. Shea*, 43 ECAB 1022 (1992); see also *Glen B. Cox*, 42 ECAB 703 (1991).

<sup>15</sup> See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

<sup>16</sup> 5 C.F.R. § 870.504(a)(1).

<sup>17</sup> *Id.* at § 870.504(b).

<sup>18</sup> 5 U.S.C. § 8707(d); *A.S.*, Docket No. 23-0437 (issued February 16, 2024); *K.N.*, Docket No. 22-1364 (issued October 18, 2023); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

well as a detailed overpayment worksheet explaining the overpayment calculation and how the overpayment occurred.

While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for OLI at whatever option he had selected.<sup>19</sup> Moreover, as noted, when an under withholding of OLI 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.<sup>20</sup>

As OWCP failed to deduct OLI premiums for the period January 3, 2021 through October 5, 2024, the Board finds that appellant received an overpayment of compensation in the amount of \$6,844.61 for the period January 3, 2021 through October 5, 2024, for which he was without fault.

### **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 recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>21</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup>

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. This information is needed to determine whether or not recovery of an overpayment would defeat

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<sup>19</sup> 5 C.F.R. § 870.504(a)(3); *see A.S., id.*

<sup>20</sup> 5 U.S.C. § 8707(d); *A.S., id.*; *K.N., supra* note 18; *D.H., supra* note 18.

<sup>21</sup> *Id.* at § 8129(a)-(b).

<sup>22</sup> 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).

<sup>23</sup> *Id.* at § 10.437(a)(b).

<sup>24</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>25</sup>

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

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

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>26</sup> In order to establish that recovery of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses, or that his assets do not exceed the established limit as determined by OWCP procedures.<sup>27</sup>

In its January 2, 2025 preliminary overpayment determination, OWCP explained the importance of providing an updated Form OWCP-20 and supporting financial documentation. Appellant, however, did not respond. 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.<sup>28</sup>

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>29</sup>

### **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.<sup>30</sup>

Section 10.441 of OWCP's regulations<sup>31</sup> 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

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<sup>25</sup> 5 U.S.C. § 8129.

<sup>26</sup> *Id.*

<sup>27</sup> *Supra* note 22 at § 10.436.

<sup>28</sup> *Id.* at § 10.438.

<sup>29</sup> *See K.P.*, Docket No. 25-0040 (issued December 5, 2024); *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>30</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>31</sup> *Id.* at § 10.441(a).



compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>32</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$909.48 from appellant's continuing compensation payments, every 28 days.

OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, 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>33</sup> In this case, appellant did not submit a completed Form OWCP-20, reporting his income, assets, and expenses with supporting financial documentation prior to OWCP's issuance of the February 28, 2025 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$909.48 from appellant's continuing compensation payments, every 28 days.

### **LEGAL PRECEDENT -- ISSUE 4**

The schedule award provisions of FECA<sup>34</sup> and its implementing regulations<sup>35</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>36</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, is used to calculate schedule awards.<sup>37</sup>

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.<sup>38</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>39</sup> Additionally, FECA specifically provides for

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<sup>32</sup> *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>33</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

<sup>34</sup> *Supra* note 1.

<sup>35</sup> 20 C.F.R. § 10.404.

<sup>36</sup> *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>37</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>38</sup> *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

<sup>39</sup> 5 U.S.C. § 8107(c).

compensation for loss of hearing and loss of vision.<sup>40</sup> By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, vulva/vagina, and skin.<sup>41</sup> Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole.<sup>42</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.<sup>43</sup>

#### **ANALYSIS -- ISSUE 4**

The Board finds that appellant has not established entitlement to an increased schedule award.

The FECA compensation schedule provides that total loss of a kidney equals 156 weeks of compensation.<sup>44</sup> In his August 2, 2024 medical report, Dr. Bass diagnosed end stage chronic kidney disease and noted that appellant had lost 96 percent of function in each kidney. In his November 11, 2024 report, Dr. Minev, OWCP's DMA, opined that appellant had 100 percent permanent impairment of his right kidney and 100 percent permanent impairment of his left kidney. Thus, appellant is entitled to the full 156 weeks of compensation for total loss of each kidney, for a total of 312 weeks of compensation.<sup>45</sup>

In a second opinion evaluation report dated April 9, 2024, Dr. Kraut found that appellant had 65 percent whole person impairment due to urinary tract disease. However, neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole.<sup>46</sup> As such, Dr. Kraut's report is insufficient to establish entitlement to an increased schedule award.<sup>47</sup>

The record reflects that, by decision dated December 4, 2024, appellant received a schedule award for the period December 1, 2024 through November 23, 2030, which equaled 312 weeks of compensation. Thus, appellant was awarded 100 percent schedule award compensation for each

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<sup>40</sup> *Id.*

<sup>41</sup> 20 C.F.R. § 10.404(b).

<sup>42</sup> *Supra* note 39; 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>43</sup> *Supra* note 37 at Chapter 2.808.6f (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

<sup>44</sup> *Supra* note 42.

<sup>45</sup> *Id.*

<sup>46</sup> *Supra* note 43.

<sup>47</sup> *Id.*; *see J.R.*, Docket No. 24-0293 (issued May 9, 2024).

of his kidneys. Accordingly, he is not entitled to an additional schedule award for the right or left kidney.<sup>48</sup>

### **LEGAL PRECEDENT -- ISSUE 5**

A schedule award is payable consecutively, but not concurrently, with an award for wage loss for disability for the same injury.<sup>49</sup> A schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body and/or extremity.<sup>50</sup>

### **ANALYSIS -- ISSUE 5**

The Board finds that OWCP properly denied appellant's request for payment of schedule award benefits for the loss of use of his kidneys concurrently with payment of wage-loss compensation benefits for total disability due to his accepted employment injury.

The record reflects that OWCP paid appellant wage-loss compensation benefits for total disability on the supplemental rolls effective May 20, 2010, and on the periodic rolls effective August 21, 2016, due to the accepted employment injury. By decision dated December 4, 2024, OWCP granted appellant a schedule award for 100 percent permanent impairment of the right kidney and 100 percent permanent impairment of the left kidney, also due to the accepted employment injury.

Appellant's award of wage-loss compensation benefits for total disability and his schedule award arose from the same injury. As noted above, a schedule award is payable consecutively, but not concurrently, with an award for wage loss for disability for the same injury.<sup>51</sup> Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.<sup>52</sup> Accordingly, OWCP properly denied appellant's request for concurrent payment of schedule award benefits and wage-loss compensation benefits for total disability.

### **LEGAL PRECEDENT -- ISSUE 6**

Section 8135(a) of FECA,<sup>53</sup> which allows for the discharge of the liability of the United States by payment of lump sums, affords the Secretary of Labor discretionary authority to use lump sums as a means of fulfilling the responsibility of OWCP in administering FECA. OWCP's

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<sup>48</sup> U.S.C. § 8107(c)(5); *see J.R., id.*

<sup>49</sup> *Supra* note 37 at Chapter 2.808.4a(3) (February 2013); *see S.M.*, Docket No. 17-1557 (issued September 4, 2018); *E.S.*, Docket No. 16-1248 (issued May 15, 2017); *S.W.*, Docket No. 10-2071 (issued July 11, 2011).

<sup>50</sup> *Id.* at Chapter 2.808.4a(5); *Michael J. Biggs*, 54 ECAB 595, 596-97 (2003).

<sup>51</sup> *Supra* note 49.

<sup>52</sup> *G.S.*, Docket No. 17-1318 (issued October 11, 2017); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

<sup>53</sup> 5 U.S.C. § 8135.

regulations provide that there is no absolute right to a lump-sum payment with respect to a schedule award.<sup>54</sup> A lump-sum payment may be made to an employee entitled to a schedule award where OWCP determines that such a payment is in the employee's best interest.<sup>55</sup> The regulations provide that a lump-sum payment generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or receiving annuity payments).<sup>56</sup>

### **ANALYSIS -- ISSUE 6**

The Board finds that OWCP properly denied appellant's request for a lump-sum payment of his schedule award.

OWCP granted appellant a schedule award for 312 weeks of compensation commencing December 1, 2024. He requested a lump-sum payment. As noted, there is no provision for an advanced payment of a portion of a schedule award. OWCP does have discretionary authority to grant a single, lump-sum payment for a schedule award if it is determined to be in the employee's best interest.<sup>57</sup>

The record reveals that appellant was not working or receiving annuity payments at the time of OWCP's May 7, 2025 decision denying his request for a lump-sum payment. In an EN-1032 form received on December 31, 2024, he did not report any wages from employment or receipt of retirement annuity payments. Appellant has provided no evidence that he was working or receiving a regular income. Accordingly, the Board finds that the evidence of record establishes that he would rely on the schedule award payments as a substitute for lost wages. Based on the standard set forth at 20 C.F.R. § 10.422(b), OWCP found there was no evidence that a lump-sum payment would be in appellant's best interest.<sup>58</sup>

The Board finds that OWCP did not abuse its discretion in denying the request for a lump-sum payment. Pursuant to 20 C.F.R. § 10.422(b), OWCP properly denied the request for a lump-sum payment.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,844.61 for the period January 3, 2021 through October 5, 2024, for which he was without fault, because OWCP failed to deduct OLI premiums from his FECA wage-loss compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting

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<sup>54</sup> 20 C.F.R. § 10.422(b).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* See also *E.S.*, Docket No. 24-0500 (issued April 1, 2024).

<sup>58</sup> See *E.S.*, *id.*; *D.E.*, Docket No. 12-0158 (issued June 8, 2012).

\$909.48 from his continuing compensation payments every 28 days. The Board additionally finds that appellant has not met his burden of proof to establish entitlement to an increased schedule award. The Board also finds that OWCP properly denied appellant's request for concurrent payment of schedule award benefits and wage-loss compensation for the accepted employment injury. The Board further finds that OWCP properly denied appellant's request for a lump-sum payment of his schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28 and May 7, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 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