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C.J., Appellant)	
)	
and)	Docket No. 22-1107
)	Issued: September 11, 2025
U.S. POSTAL SERVICE, POST OFFICE,)	
Bedford Park, IL, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

¹ 5 U.S.C. § 8101 *et seq.*

OWCP properly determined that appellant was at fault in the creation of the overpayment regarding receipt of wage-loss compensation at the augmented rate, thereby precluding waiver of recovery of the overpayment; and (6) whether OWCP properly required recovery of the overpayments by deducting \$583.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On November 1, 2010 appellant, then a 49-year-old shipping solutions specialist, filed an occupational disease claim (Form CA-2) alleging that she developed a left knee condition due to factors of her federal employment including heavy lifting and prolonged driving.² OWCP accepted the claim for left knee meniscal tear. It subsequently expanded its acceptance of the claim to include an aggravation of left knee chondromalacia, a nasal bone fracture, head, face and neck contusions, sprains of the neck and back, and an aggravation of left hip pain. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning April 1, 2011 and on the periodic rolls beginning November 5, 2011.³ The case record establishes that deductions were not made for appellant's post-retirement life insurance (PRBLI) elections. The case record further establishes that OWCP paid appellant wage-loss compensation at the augmented rate due to her dependent child, R.B., born February 5, 1999.

In a May 28, 2013 letter, the Office of Personnel Management (OPM) informed OWCP that, as a compensation, appellant was eligible to continue her life insurance coverage under the Federal Employees' Group Life Insurance (FGLI) program. The final base salary on which life insurance coverage was based was \$85,664.00. It requested that OWCP deduct premiums for the following life insurance elections: basic life insurance (BLI); Option A (Standard Option); Option B (Additional Optional Insurance) at 5X with no reduction; and Option C (Family Optional Insurance) at "5 no reduction multiples." OPM noted that the commencement date for the post-retirement deductions was August 13, 2011, and that the basic and optional coverage premiums were to begin on the OWCP commencing date.

As of June 2, 2013, OWCP adjusted appellant's wage-loss compensation to deduct the appropriate premiums per the information provided by OPM.

In a letter dated March 23, 2017, OWCP advised appellant that compensation was payable for an unmarried child who had reached the age of 18 and was a full-time student who had not completed four years of education beyond high school. It notified her that the law prohibited acceptance of compensation when a dependent was no longer entitled to it and advised her to notify it immediately when her dependent was no longer a full-time, unmarried student under the age of 23 who had not completed four years of education beyond high school. OWCP informed appellant that any compensation payment received after a change in the status of the dependent must be returned and replaced with a payment in the correct amount. It provided a Student Dependency

² OWCP assigned the present claim OWCP File No. xxxxxx622. The Board notes that appellant has previously accepted claims for cervical spondylosis without myelopathy, brachial neuritis or radiculitis on the left, and a adhesive capsulitis of the left shoulder. OWCP has administratively combined OWCP File Nos. xxxxxx548, xxxxxx622, and xxxxxx993, with OWCP File No. xxxxxx993 designated as the master file.

³ Appellant's compensation payments were made *via* electronic funds transfer (EFT).

form for her completion to indicate if she was continuing to claim augmented compensation for R.B. as a student.

Appellant completed the Student Dependency form on April 18, 2017, and indicated that R.B. had not yet completed high school and would be attending college in the fall of 2017.

In letters dated March 1, 2018, March 14, 2019, and March 25, 2020, OWCP again advised appellant that compensation was payable for an unmarried child who had reached the age of 18 and was a full-time student, who had not completed four years of education beyond high school. It provided her with another Student Dependency form for her completion.

OWCP subsequently received completed Student Dependency forms dated March 6, 2018 and April 29, 2019, wherein appellant indicated that beginning August 20, 2017 R.B. was enrolled in college.

On March 30, 2020 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation for which she was without fault, in the amount of \$4,823.24 for the period August 13, 2011 through June 1, 2013, because OWCP failed to properly deduct her life insurance premiums for the period. It provided an overpayment recovery questionnaire (Form OWCP-20) for her completion and requested that she provide supporting financial documentation. OWCP also provided an overpayment action request form and further notified appellant 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.

On April 27, 2020 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She disagreed with the fact and amount of the life insurance overpayment and requested waiver.

A prerecoupment hearing was held on August 31, 2020.

By decision dated November 16, 2020, OWCP's hearing representative vacated the March 30, 2020 preliminary overpayment determination, finding that the case record did not contain documentation signed by appellant confirming her election of PRBLI at no reduction. The hearing representative, therefore, remanded the case for further development of the case record.

In letters dated November 27, 2020 and January 4, 2021, OWCP requested that the employing establishment provide details of the payments of appellant's life insurance premiums. It also requested her signed election form.

In a February 19, 2021 letter, OPM again informed OWCP that, as a compensationner, appellant was eligible to continue her life insurance coverage under the FEGLI program. The final base salary on which life insurance coverage was based was \$85,664.00. It noted appellant's life insurance elections as follows: "BLI no-reduction"; Option A; Option at 5X with no reduction; and Option C at "5X no reduction." OPM noted that the commencement date for the post-retirement deductions was August 13, 2011, and that the basic and optional coverage premiums were to begin on the OWCP commencing date.

OWCP also received a Continuation of Life Insurance Coverage as an Annuitant or Compensationner form (SF 2818) signed by appellant on January 31, 2012, indicating that she

elected the following life insurance coverages: BLI with no reduction Option A, Option B at 5X with no reduction, and Option C at 5 multiples with no reduction.

OWCP continued to pay appellant wage-loss compensation on the periodic rolls *via* EFT.⁴

On February 13, 2021 appellant completed a financial disclosure statement (Form EN-1032) and indicated that she continued to claim R.B. as a dependent. The form instructed that she could claim augmented compensation for an unmarried child under 23 years of age who was a full-time student and had not completed four years of school beyond the high school level.

In a letter dated March 31, 2021, OWCP again advised appellant that compensation was payable for an unmarried child who had reached the age of 18 and was a full-time student who had not completed four years of education beyond high school. It provided a form for her to complete if she continued to claim augmented compensation for R.B. as a student.

On April 1, 2021 appellant informed OWCP that her daughter had finished her four-year degree in January 2021 and that she was no longer eligible for compensation at the augmented rate. On April 2, 2021 OWCP reduced her wage-loss compensation on the periodic rolls to \$3,847.56 every 28 days effective March 28, 2021 to reflect her lack of dependents.

By letter dated May 3, 2021, OWCP requested that appellant provided additional information regarding R.B.'s student status, including documentation from her educational institution. It noted that an overpayment of compensation had occurred beginning sometime in January 2021, the date that R.B. was no longer considered a full-time student.

On June 9, 2021 OWCP documented that it had contacted R.B.'s educational institution, which reported that she had graduated on December 19, 2020 and was no longer a full-time student.

In a preliminary overpayment determination dated June 9, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$4,283.24 for the period August 13, 2011 through June 1, 2013 because OWCP failed to properly deduct appellant's life insurance premiums. It provided its calculations, noting that she had received compensation for the period August 13, 2011 through June 1, 2013 in the amount of \$113,015.22, when she was only entitled to receive wage-loss compensation in the amount of \$108,731.98, resulting in an overpayment in the amount of \$4,283.24. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and a Form OWCP-20, and submit supporting documentation including tax returns, bank account statements, bills, cancelled checks, pay slips, and other records. Additionally, it advised her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoument hearing.

In a preliminary overpayment determination dated June 17, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$2,171.68 for the period December 20, 2020 through March 27, 2021 because she was paid compensation at an

⁴ On January 2, 2021 OWCP paid appellant \$4,650.48 for the period December 6, 2020 through January 2, 2021. On January 30, 2021 it paid appellant \$4,650.48 for the period January 3 through 30, 2021.

augmented 3/4 rate (75 percent) for claimants with dependents, rather than the 2/3 rate (66 2/3 percent) for which she was eligible, as she had no qualifying dependents beginning December 20, 2020. It provided its calculations, noting that she was paid \$15,994.77 in wage-loss compensation at the augmented 3/4 rate when she was only entitled to \$13,823.09 in wage-loss compensation at the basic 2/3 rate, resulting in an overpayment of compensation of \$2,171.68. OWCP further advised appellant of its preliminary determination that she was at fault in the creation of the overpayment because she failed to provide information which she knew or should have known to be material. It requested that she complete an overpayment action request form and a Form OWCP-20, and submit supporting documentation including tax returns, bank account statements, bills, cancelled checks, pay slips, and other records. Additionally, OWCP advised appellant 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.

On July 1, 2021 appellant requested a prerecoupment hearing regarding the June 9, 2021 preliminary overpayment determination concerning the life insurance premiums. She requested waiver of recovery of the overpayment as she was found without fault.

On July 12, 2021 appellant requested a prerecoupment hearing regarding the June 17, 2021 preliminary overpayment determination concerning the augmented compensation rate. She requested waiver of the overpayment and disagreed with the amount of the overpayment, asserting that she had timely notified OWCP of her daughter's college graduation date.

A prerecoupment hearing regarding both overpayments was held on November 16, 2021.

By decision dated January 25, 2022, OWCP's hearing representative finalized the June 9, 2021 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$4,283.24 for the period August 13, 2011 through June 1, 2013, because OWCP failed to properly deduct appellant's life insurance premiums. She further found that appellant was without fault in the creation of the life insurance overpayment, but denied waiver of recovery because the evidence of record failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$388.00 from her continuing compensation payments, every 28 days.

By separate decision dated January 25, 2022, OWCP's hearing representative finalized the June 17, 2021 preliminary overpayment determination that an overpayment of compensation had been created in the amount of \$2,171.88 because appellant received wage-loss compensation at the augmented rate during the period December 20, 2020 through March 27, 2021 when she no longer had a dependent. She further found that appellant was at fault in the creation of this overpayment and therefore not eligible for waiver. OWCP's hearing representative directed recovery of the overpayment by deducting \$583.00 from appellant's continuing compensation payments, every 28 days.

LEGAL PRECEDENT -- ISSUE 1

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 duty⁵. 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

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁷ The coverage for BLI is effective unless waived,⁸ and premiums for basic and optional life coverage are withheld from the employee's pay.⁹ Upon retirement, separation from the employing establishment, or placement on the periodic rolls, an employee may choose to continue basic and OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹⁰ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹¹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹²

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides that an employee receiving compensation under FECA may elect continuous withholdings from his or her compensation, so that his or her life insurance coverage may be continued without reduction. OWCP's regulations at 5 C.F.R. § 870.701 (December 5, 1980) provide that an eligible employee has 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 2 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 1 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).¹³

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

¹¹ *Id.* at § 8707(b)(2).

¹² *Id.* at § 8706(b)(3)(B). *See A.V.*, Docket No. 21-0887 (issued May 12, 2022); *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

¹³ *See A.V., id.; I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

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 remained in effect.¹⁴ An employee who does not file a life insurance election form 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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$4,283.24 for the period August 13, 2011 through June 1, 2013, for which she was without fault, because OWCP failed to properly deduct appellant's life insurance premiums.

In a February 19, 2021 letter, OPM informed OWCP that, as a compensation, appellant was eligible to continue her life insurance coverage under the FEGLI program. The final base salary on which life insurance coverage was based was \$85,664.00. It noted appellant's life insurance elections as follows: "BLI no-reduction"; Option A; Option at 5X with no reduction; and Option C at "5X no reduction." OPM noted that the commencement date for the post-retirement deductions was August 13, 2011, and that the basic and optional coverage premiums were to begin on the OWCP commencing date. OWCP also received an SF-2818 signed by appellant on January 31, 2012, indicating that she elected the following life insurance coverages: BLI with no reduction Option A, Option B at 5X with no reduction, and Option C at 5 multiples with no reduction. As OWCP deducted life insurance premiums based on the information provided by OPM, rather than appellant's actual elections, it did not properly deduct for life insurance premiums from appellant's wage-loss compensation benefits for the period August 13, 2011 through June 1, 2013. The Board thus finds that appellant received an overpayment of compensation for the period August 13, 2011 through June 1, 2013, for which she was without fault.

With regard to the amount of the overpayment, OWCP provided its overpayment calculations, finding that appellant had received compensation for the period August 13, 2011 through June 1, 2013 in the amount of \$113,015.22, when she was only entitled to receive wage-loss compensation in the amount of \$108,731.98, resulting in an overpayment in the amount of \$4,283.24. The Board thus finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,283.24 for the period August 13, 2011 through June 1, 2013.¹⁷

¹⁴ 5 C.F.R. § 870.504(a)(1).

¹⁵ *Id.* at § 870.504(b).

¹⁶ 5 U.S.C. § 8707(d); *see also* *C.M.*, Docket No. 21-0059 (issued February 23, 2022); *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, *supra* note 12.

¹⁷ *See I.J.*, Docket No. 19-1672 (issued March 10, 2020); *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless 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.¹⁸

Recovery of an overpayment will defeat the purpose of FECA when 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.¹⁹ 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.²⁰

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.²¹

ANALYSIS -- ISSUE 2

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

As OWCP found appellant without fault in the creation of this 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.²² Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.²³

¹⁸ 5 U.S.C. § 8129.

¹⁹ 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).

²⁰ *Id.* at § 10.437(a)(b).

²¹ *Id.* at § 10.438.

²² *Id.* at § 10.436.

²³ *Id.* at § 10.438; *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

In its preliminary overpayment determination dated June 9, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit sufficient financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. She did not complete a Form OWCP-20 outlining her income, assets, and expenses. The evidence of record is therefore insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁴

Consequently, the Board finds that OWCP properly denied waiver of recovery of the life insurance overpayment.

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.²⁵

Section 10.441(a) of OWCP's regulations²⁶ provides in pertinent part:

"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."²⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the life insurance premiums overpayment by deducting \$388.00 from appellant's continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayment by deducting \$388.00 from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize

²⁴ See *C.L.*, Docket No. 22-0349 (issued August 30, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

²⁵ 20 C.F.R. § 10.441; see *A.S.*, Docket No. 22-0281 (issued September 26, 2022); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁶ *Id.* at § 10.441(a).

²⁷ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²⁸ Thus, the Board finds that it properly required recovery of the overpayment by deducting \$388.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 4

Section 8102 of FECA²⁹ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³⁰ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.³¹ Under FECA a dependent includes an unmarried child, while living with the employee or receiving regular contributions from the employee toward their support, who is under 18 years of age.³² FECA further provides that compensation payable for a child that would otherwise end at the time he or she reaches 18 years of age shall continue if he or she is a student under 23 years old who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study at a college, university, or training program.³³ If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.³⁴

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly found that an overpayment of compensation in the amount of \$2,171.68 was created for the period December 20, 2020 through March 27, 2021, because appellant received wage-loss compensation at the augmented rate to which she was not entitled.

The evidence of record reflects that appellant's daughter graduated from college on December 19, 2020 and was no longer a full-time student. As such, the record supports that OWCP erroneously paid appellant compensation based on the augmented rate of 75 percent for the period December 20, 2020 through March 27, 2021. OWCP paid appellant \$15,994.77 in

²⁸ See *C.S.*, Docket No. 23-0587 (issued July 9, 2025); *J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

²⁹ *Supra* note 1.

³⁰ 5 U.S.C. § 8102(a).

³¹ See *id.* at § 8110(b).

³² *Id.* at § 8110(a)(3).

³³ *Id.* at § 8101(17).

³⁴ See *R.S.*, Docket No. 20-0177 (issued September 3, 2021); *V.R.*, Docket No. 20-0571 (issued July 6, 2021); *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

FECA compensation for that period at the augmented rate of 75 percent, when she was only entitled to \$13,823.09 at the 66 2/3 percent basic rate. OWCP properly determined that the difference yielded an overpayment of compensation in the amount of \$2,171.68. The Board thus finds that appellant received an overpayment in the amount of \$2,171.68 for the period December 20, 2020 through March 27, 2021 because she received wage-loss compensation at the augmented rate.³⁵

LEGAL PRECEDENT -- ISSUE 5

Section 8129(a) of FECA provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled.³⁶ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “[a]djustment 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 this subchapter or would be against equity and good conscience.”³⁷ No waiver of payment is possible if the claimant is not “without fault” in helping to create the overpayment.³⁸

In determining whether an individual is not “without fault” or alternatively “at fault” in the creation of an overpayment, section 10.433(a) of OWCP’s regulations provides in relevant part:

“A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment--

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.”³⁹

Section 10.433(b) of OWCP’s regulations provides:

“Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those

³⁵ See *A.A.*, Docket No. 22-0751 (issued December 12, 2022).

³⁶ 5 U.S.C. § 8129(a).

³⁷ *Id.* at § 8129(b).

³⁸ *D.T.*, Docket No. 20-1482 (issued September 23, 2022); *L.J.*, 59 ECAB 264 (2007).

³⁹ 20 C.F.R. § 10.433(a).

circumstances and the individual's capacity to realize that he or she is being overpaid.”⁴⁰

The Board has held that an employee who receives payments from OWCP in the form of direct deposit may not be at fault the first or second time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.⁴¹ The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.⁴² Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.⁴³

ANALYSIS -- ISSUE 5

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the augmented rate overpayment for the period December 20, 2020 through January 30, 2021.

As explained above, the case record establishes that appellant no longer had a dependent as of December 20 2020 as her daughter had graduated from college and was no longer enrolled as a full-time student. The first EFT deposit following the daughter's graduation was made by OWCP on January 2, 2021 and covered the period December 6, 2020 through January 2, 2021. The second EFT deposit following the daughter's graduation was made by OWCP on January 30, 2021 and covered the period January 3 through 30, 2021.

As noted above, the Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault for the first or second incorrect deposit since the acceptance of the overpayment, at the time of receipt of the direct deposit, lacks the requisite knowledge.⁴⁴

There is no documentation to demonstrate that appellant had knowledge at the time she received direct deposits from OWCP on January 2 and 30, 2021 that the payment amounts were

⁴⁰ *Id.* at 10.433(b).

⁴¹ See *R.S.*, Docket No. 20-0177 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *Tammy Craven*, 57 ECAB 689 (2006).

⁴² See *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); see also *Karen Dixon*, 56 ECAB 145 (2004).

⁴³ See *J.B.*, Docket No. 22-1027 (issued November 16, 2023); *L.G.*, *id.*; *V.S.*, Docket No. 13-1278 (issued October 23, 2013).

⁴⁴ *Id.*

incorrect.⁴⁵ The Board thus finds that she was without fault in accepting the two direct deposits covering the period of the overpayment from December 20, 2020 through January 30, 2021.

The case is, therefore, not in posture for decision with regard to the issue of waiver of recovery of the overpayment for the period December 20, 2020 through January 30, 2021. The case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment covering that period.⁴⁶ Following any further development as deemed necessary, OWCP shall issue a *de novo* decision regarding waiver of recovery.

The Board further finds, however, that appellant was at fault in the creation of the overpayment for subsequent compensation payments covering the period January 31 through March 27, 2021.

Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.⁴⁷ In cases involving a series of incorrect payments, where the requisite knowledge is established by documentation from OWCP or simply with the passage of time and opportunity for discovery, a claimant will be at fault for accepting the payments subsequently deposited.⁴⁸ By the time of the third payment, appellant should have known that she was not entitled to the same amount of wage-loss compensation as she had received prior to her daughter's December 19, 2020 graduation. Appellant, therefore, knew or should have known that OWCP had begun to make payments to him in error and that she was no longer entitled receive wage-loss compensation at the augmented rate. The Board therefore finds that OWCP properly found that appellant was at fault in the creation of the overpayment for the period January 31 through March 27, 2021. Consequently, appellant is precluded from waiver of recovery with regard to the period January 31 through March 27, 2021.⁴⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,283.24 for the period August 13, 2011 through June 1, 2013, for which she was without fault, because OWCP failed to properly deduct appellant's life insurance premiums. The Board further finds that OWCP properly denied waiver of recovery of this overpayment and properly required recovery by deducting \$388.00 from her continuing compensation payments, every 28 days. The Board also finds that OWCP properly found that an overpayment of compensation in the amount of \$2,171.68 was created for the period December 20, 2020 through March 27, 2021, because appellant received wage-loss compensation at the augmented rate to which she was not entitled. The Board further finds that OWCP improperly determined that appellant was at fault in the

⁴⁵ See *J.B.*, *supra* note 43; *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

⁴⁶ See *J.B.*, *id.*; *D.R.*, Docket No. 21-0234 (issued November 17, 2022); *C.C.*, Docket No. 19-1268 (issued April 2, 2021).

⁴⁷ See *J.B.*, *id.*; *P.B.*, Docket No. 19-0329 (issued December 31, 2019); *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

⁴⁸ *Id.*

⁴⁹ In light of the Board's disposition of Issue 5, it is premature to address Issue 6.

creation of this overpayment of compensation for the period December 20, 2020 through January 30, 2021, but properly determined that she was at fault in the creation of this overpayment of compensation for the period January 31 through March 27, 2021 thereby precluding waiver of recovery of that portion of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2022 decision of the Office of Workers' Compensation Programs with regard to the life insurance premium overpayment is affirmed. The January 25, 2022 decision of the Office of Workers' Compensation Programs with regard to the augmented rate overpayment is affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 11, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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