

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>W.H., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 24-0657</b>
	)	<b>Issued: April 2, 2026</b>
<b>U.S. POSTAL SERVICE, NEW JERSEY</b>	)	
<b>INTERNATIONAL BULK MAIL &amp;</b>	)	
<b>DISTRIBUTION CENTER, Jersey City, NJ,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Stephen Larkin, for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On June 2, 2024 appellant, through her representative, filed a timely appeal from a December 19, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).

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<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.

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 to consider the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$30,262.18 for the period June 23, 1996 through May 20, 2023, for which she was without fault, as OWCP failed to properly deduct life insurance premiums from her FECA wage-loss compensation; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments, every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>4</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 October 12, 1994 appellant, then a 36-year-old flexi-clerk, sustained an injury to the left upper extremity when she fell off of a platform while attempting to retrieve mail sacks in the performance of duty. OWCP accepted the claim for left shoulder sprain, contusion to the ribs, and post-traumatic stress disorder. Appellant stopped work on October 12, 1994, and worked intermittently thereafter. OWCP paid her wage-loss compensation on the periodic rolls, effective June 16, 2002.

On May 23, 2023 the Office of Personnel Management (OPM) informed OWCP that, as a compensator, 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 \$40,952.00, effective June 23, 1996. OPM noted appellant's life insurance elections as follows: basic life insurance (BLI) at no reduction effective June 23, 1996 (No BLI after age 65 postretirement basic life insurance (PRBLI)) and Option B (Additional Optional Insurance) at 3X with no reduction. OPM requested that OWCP collect for any underpaid premiums for "Option B 3x effective May 1, 2023 (first of the month after age 65)." It further requested that OWCP collect for any underpaid premiums for the no reduction and correct final salary.

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

<sup>3</sup> The Board notes that, following the December 19, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

<sup>4</sup> Docket No. 10-0683 (issued April 22, 2011).

On a Continuation of Life Insurance Coverage as an Annuitant or Compensation Form (SF 2818), signed on July 12, 2001, appellant elected the following life insurance coverages: BLI at no reduction and optional life insurance.

In an overpayment calculation memorandum dated May 31, 2023, OWCP explained that no deductions were made from appellant's wage-loss compensation for BLI at no reduction for the period June 23, 1996 through May 20, 2023. It noted that the final annual salary effective June 23, 1996 was \$40,952.00. OWCP calculated that it should have deducted \$30,262.18 for that same period.

In a preliminary overpayment determination dated May 31, 2023, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$30,262.18 for the period June 23, 1996 through May 20, 2023, for which she was without fault, because OWCP failed to properly deduct her life insurance premiums. OWCP requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and other records that support income and expenses. 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 prerecoupment hearing.

On June 12, 2023 appellant requested a prerecoupment hearing regarding the overpayment and waiver of recovery of the overpayment before a representative of OWCP's Branch of Hearings and Review. She disagreed with the fact and amount of overpayment and requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment.

A prerecoupment hearing was held on October 12, 2023. During the hearing, appellant testified that she had total monthly expenses of \$2,732.69, and assets totaling approximately \$4,820.00. Appellant also reported a secondary property that was not her primary residence. She provided financial documentation, including an appraisal of real property dated October 26, 2023 for \$24,900.00.

OWCP subsequently received page 2 and 3 of Form OWCP-20, wherein appellant reported total monthly income of \$5,794.68, total monthly expenses of \$3,665.10, and assets totaling \$675.46. Another Form OWCP-20 was received on November 9, 2023, wherein appellant reported an increase in utilities to \$861.75 and other expenses of \$1,932.17. On both forms, the bottom part of the imaged page was illegible.

By decision dated December 19, 2023, OWCP's hearing representative finalized the May 31, 2023 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$30,262.18, for the period June 23, 1996 through May 20, 2023, because OWCP failed to properly deduct life insurance premiums from appellant's FECA wage-loss compensation payments. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery. The hearing representative required recovery of the overpayment by deducting \$400.00 from her continuing compensation payments, every 28 days.

### LEGAL PRECEDENT -- ISSUE 1

FECA<sup>5</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>6</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>7</sup>

When an underwithholding 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>8</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$30,262.18, for the period June 23, 1996 through May 20, 2023, for which she was without fault, as OWCP failed to properly deduct life insurance premiums from her FECA wage-loss compensation.

On May 23, 2023 OPM 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 \$40,952.00, effective June 23, 1996. OPM noted appellant's life insurance elections as follows: BLI at no reduction effective June 23, 1996 (No BLI after age 65 PRBLI) and Option B at 3X with no reduction. OPM requested that OWCP collect for any underpaid premiums for "Option B 3x effective May 1, 2023 (first of the month after age 65)." It further requested that OWCP collect for any underpaid premiums for the no reduction and correct final salary. On an SF 2818, signed on July 12, 2001, appellant elected the following life insurance coverages: BLI at no reduction and optional life insurance. The case record, however, establishes that OWCP failed to properly deduct the appropriate life insurance premiums from appellant's FECA wage-loss compensation for the period June 23, 1996 through May 20, 2023. The Board thus finds that appellant received an overpayment of compensation for the period June 23, 1996 through May 20, 2023, for which she was without fault.<sup>9</sup>

With regard to the amount of the overpayment, in an overpayment calculation memorandum dated May 31, 2023, OWCP explained that no deductions were made from appellant's wage-loss compensation for BLI at no reduction for the period June 23, 1996 through May 20, 2023. It noted the final annual salary effective June 23, 1996 was \$40,952.00. OWCP calculated that it should have deducted \$30,262.18 for that same period. The Board has reviewed

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

<sup>6</sup> *Id.* at § 8102(a).

<sup>7</sup> *Id.* at § 8129(a).

<sup>8</sup> *Id.* at § 8707(d); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

<sup>9</sup> *Supra* note 7. *See also, S.C.*, Docket No. 22-0809 (issued August 22, 2025).

OWCP's calculations for the period June 23, 1996 through May 20, 2023 and finds that appellant received an overpayment of compensation in the amount of \$30,262.18.

### **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.<sup>10</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>11</sup> 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.<sup>12</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>13</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>14</sup>

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

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<sup>10</sup> 5 U.S.C. § 8129.

<sup>11</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>12</sup> *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>13</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>14</sup> *Supra* note 11 at Chapter 6.400.4c(3).

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>15</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 recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>16</sup>

Appellant has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses. She reported owning a secondary property that was not her primary residence valued at \$24,900.00. As explained above, for an individual with no eligible dependents, the asset resource 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.<sup>17</sup> As appellant's assets exceed the allowable resource base, recovery of the overpayment would not defeat the purpose of FECA.

The Board also finds that appellant has not established that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.<sup>18</sup>

As the evidence of record fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the 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.<sup>19</sup>

Section 10.441(a) of OWCP's regulations<sup>20</sup> 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

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<sup>15</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>16</sup> 5 U.S.C. § 8129.

<sup>17</sup> *Supra* note 11.

<sup>18</sup> *Supra* note 13.

<sup>19</sup> 20 C.F.R. § 10.441; *see R.L.*, Docket No. 23-0110 (issued July 28, 2023); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>20</sup> *Id.* at § 10.441(a).

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.”<sup>21</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant’s continuing compensation payments, every 28 days.

The case record supports that in requiring recovery of the overpayment by deducting \$400.00 from appellant’s continuing compensation payments every 28 days, OWCP took into consideration the financial information submitted by appellant, as well as factors set forth in 20 C.F.R. § 10.441. It found that this method of recovery would minimize any resulting hardship on appellant, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>22</sup> The Board thus finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant’s continuing compensation payments, every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$30,262.18 for the period June 23, 1996 through May 20, 2023, for which she was without fault, because OWCP failed to properly deduct life insurance premiums from her FECA wage-loss compensation payments. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery by deducting \$400.00 from her continuing compensation payments, every 28 days.

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<sup>21</sup> *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>22</sup> See *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2026  
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