

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,494.73 for the period June 6, 2022 through October 7, 2023, for which she was without fault, because health insurance premiums were not properly deducted 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 \$300.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On February 11, 2021, appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2021 she injured her left knee when she slipped and fell while ascending an ice-covered ramp in the performance of duty. She stopped work that same day. OWCP accepted the claim for dislocation of the left patella and contusion of the left knee. It paid appellant wage-loss compensation on the supplemental and periodic rolls. The case record indicates that, as of February 9, 2021, appellant was not covered under the Federal Employees Health Benefits Program (FEHB).

On March 9, 2023, OWCP received a copy of appellant's Health Benefits Election Form (Standard Form (SF) 2809), wherein she elected coverage under the NALC Health Benefit Plan, effective January 1, 2022.

On June 13, 2023, appellant was notified by the employing establishment that her health insurance coverage would be terminated effective June 16, 2023 "due to non-payment of the sponsoring organization's membership dues."

In a letter dated August 7, 2023, counsel inquired as to why appellant's health insurance benefits were being discontinued. He noted that since she was receiving FECA compensation, her health insurance should be paid by OWCP and then billed back to the employing establishment.

On September 21, 2023, OWCP requested clarification from the employing establishment with regard to appellant's health insurance benefits. The employing establishment responded that appellant's health insurance premiums were not being deducted from appellant's wage-loss compensation.

In a letter dated October 31, 2023, OWCP notified the employing establishment that it began deducting premiums for health insurance from the employee's compensation, effective October 8, 2023.

By notice dated December 21, 2023, OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$3,494.73, for the period June 6, 2022 through October 7, 2023 because health benefit premiums were not properly deducted from her compensation payments for the period June 6, 2022 through October 7, 2023. It provided its calculations and explained that from June 6 through

December 31, 2022 appellant should have paid \$1,476.73 in premiums; and for the period January 1 through October 7, 2023 she should have paid \$2,018.00 in premiums. It found that the total overpayment was \$3,494.73. OWCP advised appellant that she was without fault in the creation of the overpayment and requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records that support income and expenses. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing.

In a January 29, 2023 response, appellant contended that the overpayment was inaccurate because her health insurance was cancelled several times.

On February 6, 2024, appellant requested waiver of recovery of the overpayment and a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review *via* the Employees' Compensation Operations & Management Portal (ECOMP).

By decision dated February 8, 2024, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing as untimely filed.

By decision dated February 12, 2024, OWCP finalized the December 21, 2023 preliminary overpayment determination. It found that the evidence of record was sufficient to establish that an overpayment of compensation in the amount of \$3,494.73 was created for the period June 6, 2022 through October 7, 2023 because premiums for health insurance were not properly deducted from appellant's wage-loss compensation. OWCP further found appellant without fault in the creation of the overpayment but denied waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments, every 28 days.

LEGAL PRECEDENT -- ISSUE 1

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.³ The date of the request is determined by the postmark or other carrier's date marking, or the date received in ECOMP.⁴ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁵ The only right to a

³ 20 C.F.R. at § 10.432.

⁴ *Id.* at §§ 10.439, 10.616(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁵ *Id.* at § 10.432; *see also* *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

review of a final overpayment decision is with the Board.⁶ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

OWCP issued its preliminary overpayment determination on December 21, 2023. It advised appellant that she had 30 days to request a prerecoupment hearing. On February 6, 2024, appellant requested a prerecoupment hearing *via* ECOMP. There is no provision in FECA or its regulations which allows an exception to the 30-day time limitation for requesting a prerecoupment hearing.⁸ Since the February 6, 2024 request for a prerecoupment hearing was made more than 30 days after the December 21, 2023 preliminary overpayment determination, the request was untimely.⁹ OWCP thus properly denied appellant's request for a prerecoupment hearing.¹⁰

LEGAL PRECEDENT -- ISSUE 2

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. 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.

When an underwithholding 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,494.73, for the period June 6, 2022 through October 7, 2023, because health insurance premiums were not properly deducted from her FECA wage-loss compensation.

⁶ *Id.* at § 10.440(b).

⁷ *Id.*

⁸ 20 C.F.R. § 10.440(b); *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *D.R.*, Docket No. 19-1885 (issued April 24, 2020).

⁹ 20 C.F.R. §§ 10.439, 10.616(a); *see S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

¹⁰ *See E.G.*, Docket No. 19-0176 (issued February 23, 2021); *E.V.*, Docket No. 17-1328 (issued December 11, 2017).

¹¹ 5 U.S.C. § 8102(a).

The record reflects that OWCP failed to deduct health insurance premiums from appellant's wage-loss compensation payments for the period June 6, 2022 through October 7, 2023. As noted, above, when an underwithholding 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.¹² OWCP explained that for the period June 6, 2022 through October 7, 2023, it should have deducted \$3,494.73 from appellant's wage-loss compensation for payment of the appropriate health insurance premiums, but failed to do so. The Board thus finds that fact of overpayment has been established.

With regard to the amount of the overpayment, the Board has reviewed OWCP's calculations and finds that an overpayment of compensation in the amount of \$3,494.73 for the period June 6, 2022 through October 7, 2023 was created.

LEGAL PRECEDENT – ISSUE 3

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.¹³ 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.¹⁴

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁵ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁶

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;

¹² *Id.*

¹³ 5 U.S.C. § 8129(a)-(b).

¹⁴ *Id.*; *see also*, *L.S.*, 59 ECAB 350 (2008).

¹⁵ 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).

¹⁶ *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).

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.¹⁷

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 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.¹⁸

ANALYSIS -- ISSUE 3

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.¹⁹

In its preliminary determination dated December 21, 2023, OWCP clearly explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information. Appellant, however, did not submit a completed Form OWCP-20 or otherwise submit any financial information 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.

Consequently, as appellant did not submit the information required under 20 C.F.R. §10.438, which was necessary to determine her eligibility of waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.

Section 10.441 of OWCP's regulations provides in pertinent part that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of

¹⁷ 20 C.F.R. § 10.437.

¹⁸ *Id.* at § 10.438; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁹ *Supra* notes 13 and 14.

compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁰

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments, every 28 days.

OWCP provided appellant with a Form OWCP-20. It afforded her the opportunity to provide the necessary financial information and documentation to OWCP. Appellant, however, did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final overpayment decision. As noted above, the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² As appellant did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$300.00 from her continuing compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed. The Board also finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,494.73, for which she was without fault, because health insurance premiums were not properly deducted from her FECA compensation for the period June 6, 2022 through October 7, 2023. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and required recovery of the overpayment in the amount of \$300.00 every 28 days.

²⁰ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²¹ *Supra* note 18.

²² *D.C.*, Docket No. 23-0354 (issued January 12, 2024); *A.S.*, *supra* note 20; *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 15 at Chapter 6.400.3 (September 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 8 and 12, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 28, 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