

DATE: December 28, 2020

In Re:)
 [REDACTED]) Claims Case No. 2020-WV-072209.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, when an employee is aware or should be aware that she is receiving overpayments, she does not acquire title to the excess amounts and has a duty to hold the money for eventual repayment. In such circumstances, waiver is not appropriate.

It is not inequitable to require repayment when the employee had the benefit of insurance coverage during periods when the government failed to collect the proper premiums.

DECISION

An employee of the U.S. Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-WV-072209, dated September 8, 2020.

Background

In the appeal decision, DOHA affirmed an initial determination by the Defense Finance and Accounting Service (DFAS) to deny the employee's request under 5 U.S.C. § 5584 that the government waive collection of \$1,247.97 in erroneous overpayments of salary caused by DFAS's failure to deduct the health care premiums for the plan chosen by the employee under the Federal Employee Health Benefits (FEHB) program.

The record indicates that in February 2019, the employee was covered under the FEHB, with premiums properly being withheld from her salary through the pay period ending (PPE) February 2, 2019. The employee received a Notification of Personnel Action (SF-50) granting her a career appointment to a new position. The SF-50 action erroneously terminated the employee's FEHB. As a result of this administrative error, no FEHB premiums were deducted from the employee's salary during period February 4, 2019, through PPE September 28, 2019. The DOHA adjudicator found that the employee was provided with documentation in the form of leave and earnings statements (LES), that if reviewed would have alerted her to an error in the amount that was being withheld for FEHB premiums. In addition, the adjudicator also found that collection of any resulting overpayment was not inequitable considering the employee received the benefit of the FEHB coverage.

On reconsideration, the employee again notes that she limited her waiver request to the period August 14, 2019, through the PPE September 28, 2019, which totaled \$663.54. She cites the response from Blue Cross Blue Shield (BCBS) which states the cancellation of her insurance policy took place on August 14, 2019, and that it was not reinstated until September 30, 2019, with a reflection of no break in her coverage. Therefore, she maintains that she believed that she had no coverage during that period of time.

Discussion

Section 5584 of title 5, United States Code, provides authority for waiving claims of erroneous payments of pay and allowances made to employees, if the collection of the claim would be against equity and good conscience and not in the best interest of the United States. This statute is implemented within the Department of Defense under Department of Defense Instruction 1340.23 (February 14, 2008). Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing.

While an administrative error did occur, our office has consistently held that the waiver statute does not apply automatically to relieve the debts of all employees who, through no fault of their own, have received erroneous payments from the government. Waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. *See* Instruction ¶ E4.1.1.

Generally, debts may be waived only when collection would be against equity and good conscience and would not be in the best interest of the United States. *See* Instruction ¶ E4.1.2. The fact that an erroneous payment is the result of administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. In such instances, the recipient has a duty to notify an

appropriate official and set aside funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

As stated above, waiver is inappropriate if an employee is aware or should be aware that she is being overpaid. In this case, the employee does not deny that she received LES during the period of overpayment. Although an administrative error occurred leading the employee to be overpaid salary after she changed positions, this does not change the fact that the employee was on notice by virtue of her LES that her health care coverage was erroneously discontinued and premiums were not collected. Under the circumstances, waiver is not appropriate. *See* DOHA Claims Case No. 07051506 (May 22, 2007).

Although she states there was a short period in which she believed she may not have coverage, the record reflects that her FEHB coverage was later reinstated with no break. BCBS states that the cancellation was temporary and the policy was then reinstated. Therefore, it is not inequitable to require repayment because the employee, in fact, received the benefit of the health plan during the period in question. *See* DOHA Claims Case No. 2009-WV-091402.3 (December 30, 2009); DOHA Claims Case No. 07051506 *supra*; and DOHA Claims Case No. 03101402 (October 20, 2003).

Conclusion

The employee's request for relief is denied, and we affirm the appeal decision. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board