

KEYWORDS: waiver of indebtedness

DIGEST: An employee's Federal Employee's Health Benefits (FEHB) were paid by the Office of Workers' Compensation Program (OWCP) through April 12, 2002. An overpayment began to accrue after that date, when FEHB premiums should have been deducted from his salary. Due to an administrative error, the Defense Finance and Accounting Service (DFAS) failed to withhold the premiums from his salary. During the period of overpayment, the employee was receiving continuing medical treatments, and his medical bills were being paid by the OWCP. Waiver is appropriate because the employee has provided sufficient documentation that he contacted an appropriate official and was advised that the OWCP would continue to pay his FEHB premiums.

CASENO: 08-081304

DATE: 10/22/2009

DATE: October 22, 2009

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In Re: )  
          ) [REDACTED]  
          ) )  
          ) Claims Case No. 2008-WV-081304.2  
          ) )  
          ) )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

An employee's Federal Employee's Health Benefits (FEHB) were paid by the Office of Workers' Compensation Program (OWCP) through April 12, 2002. An overpayment began to accrue after that date, when FEHB premiums should have been deducted from his salary. Due to an administrative error, the Defense Finance and Accounting Service (DFAS) failed to withhold the premiums from his salary. During the period of overpayment, the employee was receiving continuing medical treatments, and his medical bills were being paid by the OWCP. Waiver is appropriate because the employee has provided sufficient documentation that he contacted an appropriate official and was advised that the OWCP would continue to pay his FEHB premiums.

## **DECISION**

An employee requests reconsideration of the August 11, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08081304. In that decision, DOHA's adjudicator sustained the initial determination of the Defense Finance and Accounting Service (DFAS) to waive a portion of the claim in the amount of \$7,880.74, and to deny the remainder of the debt in the amount of \$8,389.52.

### **Background**

The record shows that the employee elected Federal Employee's Health Benefits (FEHB) coverage, and proper deductions were withheld from his salary. In September 2001, the employee sustained injuries at work. On October 27, 2001, he was placed in the Office of Workers' Compensation Program (OWCP), and his FEHB premiums were paid by the OWCP. On February 19, 2002, the employee returned to work on a part-time basis. The record reflects that FEHB premiums continued to be paid by the OWCP through April 12, 2002. The record also reflects that beginning April 13, 2002, FEHB premiums should have been deducted from the employee's salary. However, due to an administrative error, FEHB premiums were not withheld from his salary through August 18, 2007, causing an overpayment of \$16,270.26.

In the appeal decision, the DOHA adjudicator agreed with DFAS, and waived the portion of the overpayment occurring during the period April 13, 2002, through February 19, 2005, in the amount of \$7,880.74, but denied the overpayment occurring during the period February 20, 2005, through August 18, 2007, in the amount of \$8,389.52. The employee now seeks waiver of the remainder of the indebtedness.

### **Discussion**

Under 5 U.S.C. § 5584, we have authority to waive erroneous payments of pay and allowances, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. A waiver usually is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.4. However, as stated in the Instruction, whether waiver will be granted depends on the facts in each case. *See* ¶ E4.1.8.

In this case, the record reflects that the employee was receiving continuing medical treatment on a weekly basis during the period of overpayment. The record also reflects that the employee was advised in writing that his bills for those treatments were being paid directly to his doctor by the OWCP. Under these circumstances, he reasonably may have believed that his FEHB premiums were still being paid by the OWCP. The employee has provided sufficient documentation that he contacted an appropriate official and was advised that the OWCP would

continue to pay his FEHB premiums. Accordingly, we waive an additional \$8,389.52.

### **Conclusion**

The employee's request for relief is granted. The debt is waived in the additional amount of \$8,389.52. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board