

KEYWORDS: waiver of indebtedness; FEHB premiums

DIGEST: Erroneous under-deduction of an employee's health insurance premiums resulted in a debt to the government. Since the employee knew or should have known that there was an error and since he received the benefit of the coverage, waiver of the debt is not appropriate.

CASENO: 2009-WV-091402.3

DATE: 12/30/2009

DATE: December 30, 2009

\_\_\_\_\_)  
In Re: )  
          [REDACTED] ) Claims Case No. 2009-WV-091402.3  
                                  )  
Claimant )  
\_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Erroneous under-deduction of an employee's health insurance premiums resulted in a debt to the government. Since the employee knew or should have known that there was an error and since he received the benefit of the coverage, waiver of the debt is not appropriate.

**DECISION**

An employee requests reconsideration of the November 23, 2009, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09091402. In that decision, DOHA allowed in part the waiver of collection of the overpayment of salary in the amount of \$310.24, but denied waiver of \$8,611.41.

## **Background**

The record shows that on April 7, 1995, the employee elected to change his federal health benefits (FEHB) coverage from Mail Handlers to Blue Cross Blue Shield (BCBS). The change in coverage to BCBS became effective April 16, 1995. On April 16, 1995, the employee's premiums changed from \$14.35 for Mail Handlers at the single rate to \$47.15 for BCBS at the family rate. Proper premiums were withheld through September 30, 1995. The record reflects that the Defense Finance and Accounting Service (DFAS) discovered that FEHB premiums at the Mail Handlers single rate were not deducted from the employee's salary from the pay period ending (PPE) January 26, 1995, through April 15, 1995, causing an overpayment in the amount of \$86.10. Therefore, during the PPE October 14, 1995, DFAS collected \$124.56 for FEHB premiums. Since the employee was indebted \$86.10, DFAS applied the \$77.41 to the overpayment reducing the debt to \$8.69.

The record also shows that during the period October 15, 1995, through October 28, 1995, the employee was erroneously issued a credit in the amount of \$254.40, which DFAS advised our Office represented a credit for Mail Handlers premiums at the single rate of \$14.35 plus the difference between Mail Handlers premiums at the family rate of \$31.14 and BCBS premiums at the family rate of \$47.15 for the period April 16, 1995, through October 28, 1995. Further, BCBS premiums were not deducted from the employee's salary during PPE October 28, 1995, causing an overpayment of \$47.15.

In addition, the record shows that in October 1995 the employee's health insurance plan was erroneously changed from BCBS to Mail Handlers. This error resulted in the under-deduction of the employee's health insurance premiums from his salary during the period October 29, 1995, through January 6, 2007, causing an overpayment of \$8,192.76. However, the employee's BCBS premiums were correctly deducted from his salary from January 7, 2007, through June 21, 2008. During the period June 22, 2008, through July 5, 2008, BCBS premiums in the amount of \$145.14 were not deducted from the employee's salary and the employee erroneously received a retroactive payment for FEHB premiums in the amount of \$273.51. The employee's debt thus totaled \$8,921.65.

Our Office waived a portion of the debt in the amount of \$310.24, which resulted from the employee's FEHB premiums being miscalculated through January 6, 1996. However, 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 him to an error in the amount that was being withheld for FEHB premiums. In addition, the employee would have received health insurance booklets during the open season each year informing him of any changes in the cost of his health insurance coverage. The adjudicator determined that he should have reviewed the type and cost of coverage that he had previously elected.

In his request for reconsideration, the employee states that the debt resulted from an administrative error and not by any fault on his part. He states that he contacted finance officials on various occasions to rectify the matter and was advised that the error had been corrected. He

states that he initially contacted finance officials when he received correspondence from Mail Handlers indicating coverage for his former spouse, from whom he had been divorced since the late 1980s. He notified his finance officials and was told that his FEHB coverage was with BCBS. He states that each time he received correspondence from Mail Handlers regarding FEHB coverage, he would contact finance officials to confirm his coverage with BCBS. He states that at his last meeting with finance officials, he was told that there had been an error and the finance official did not know what to tell him. He states that he is not an expert in financial codes reflected on his LES. He states that he did, in fact, receive the benefit of the BCBS coverage. However, he states that it is not fair that he be penalized for the benefit when multiple efforts were made on his part to ensure that the appropriate coverage and deductions were being made by finance officials. He states that if finance officials had acted in a timely manner, he would not be in this situation.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. The fact that an erroneous payment is made as a result of administrative error on the part of the Government is not a sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. A person who receives payments erroneously from the Government acquires no right to the money. Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction ¶ E4.1.4. Our decisions and those of the Comptroller General indicate that waiver is not appropriate if the employee is provided information such as LES which indicate the existence of error. *See* DOHA Claims Case No. 09073001 (August 4, 2009); DOHA Claims Case No. 09032306 (April 15, 2009); and DOHA Claims Case No. 02040401 (May 21, 2002); and Comptroller General decisions B-251667, Apr. 2, 1993; B-249649, Jan. 22, 1993; B-243885, Aug. 27, 1991; and B-203458, Sept. 29, 1981.

In this case, the employee acknowledged that he received LES during the period of overpayment. The employee should have known that when he changed his health plan that his premium deductions would change. The employee's election to participate in BCBS at the family rate was effective April 16, 1995. A review of his LES reflect that in April 1995 the employee's premiums were changed to \$47.15 and the FEHB code was listed as "105." His LES reflect that proper premiums were withheld from his salary through September 30, 1995, at the rate of \$47.15 per pay period with the FEHB code listed as "105." The FEHB code changed to "455," on his PPE October 14, 1995, LES. On PPE November 11, 1995, the FEHB code remained as "455," and the premiums withheld are reflected as \$31.14. The reflection of a different health plan code on the employee's LES and the decrease in premiums withheld from

his salary, should have alerted him that something was wrong. The fact that the employee is not an expert in financial codes does not relieve him of the duty of knowing what his deductions should have been. Even though the employee states that he did contact finance officials on various occasions to verify his coverage, his responsibility did not end there. As pointed out by the DOHA adjudicator, the employee should have verified the cost of his health insurance plan during the annual open season that took place prior to the first full pay period in January 1996. *See* B-251667, *supra*. Therefore, the denial of waiver of the remainder of the debt is sustainable.

Moreover, it is not inequitable to require repayment because the employee and his family, in fact, received the benefit of the more costly health plan at a higher option level during the period in question.<sup>1</sup> *See* DOHA Claims Case No. 07051506 (May 22, 2007); DOHA Claims Case No. 03101402 (October 20, 2003); DOHA Claims Case No. 00032801 (April 21, 2000); and B-202795, Dec. 1, 1981.

### **Conclusion**

The employee's request for relief is denied, and we affirm the November 23, 2009, 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: Jean E. Smallin

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Jean E. Smallin  
Acting Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

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<sup>1</sup>The employee notes that he has repaid the retroactive payment he received in the amount of \$273.51. The employee should contact DFAS with regard to this payment.