

KEYWORDS: waiver of indebtedness

DIGEST: An employee requested waiver of repayment of his indebtedness resulting from the erroneous under-deduction of his health insurance premiums. The debt occurred after the employee changed health insurance plans. Waiver of the debt under 5 U.S.C. § 5584 is not appropriate since the employee should have known of the error when his leave and earnings statements (LES) did not reflect the change to the new health plan code number and the amount of premiums withheld from his salary remained the same. Moreover, it is not inequitable to require repayment when the employee had the benefit of the more costly health plan coverage.

CASENO: 2010-WV-021601.2

DATE: 1/26/2011

DATE: January 26, 2011

In Re:)

[REDACTED])

) Claims Case No. 2010-WV-021601.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee requested waiver of repayment of his indebtedness resulting from the erroneous under-deduction of his health insurance premiums. The debt occurred after the employee changed health insurance plans. Waiver of the debt under 5 U.S.C. § 5584 is not appropriate since the employee should have known of the error when his leave and earnings statements (LES) did not reflect the change to the new health plan code number and the amount of premiums withheld from his salary remained the same. Moreover, it is not inequitable to require repayment when the employee had the benefit of the more costly health plan coverage.

DECISION

An employee requests reconsideration of the June 30, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-021601. In that decision, DOHA allowed in part waiver of collection of the overpayment of salary in the amount of \$12.62, but denied waiver of \$12,442.07.

Background

In October 1997, the employee transferred from a position with the Department of the Navy to a position with the United States Army overseas. On October 29, 1997, the employee elected to change his Federal Employee Health Benefits (FEHB) plan from Health Net (Code LB2) to Blue Cross Blue Shield (BCBS) Service Benefit Plan (Code 102), with coverage becoming effective on November 15, 1997. However, the change in coverage was never reflected in the employee's leave and earnings statements (LES). His LES continued to show that he was covered under the Code LB2 health plan. In addition, the higher deductions for premiums required under the Code 102 health plan were not withheld from the employee's salary, and his LES reflected that fact. The failure to deduct the proper insurance premiums was due to an administrative error. This administrative error caused the employee to be overpaid from pay period ending (PPE) November 8, 1997, through August 6, 2005, in the amount of \$12,454.69. However, the record reflects that the employee was covered under the Code 102 health plan and received the benefits under that plan.

Our Office waived a portion of the debt in the amount of \$12.62, which resulted from the under-deduction of the employee's FEHB premiums during the PPE November 8, 1997. However, the DOHA adjudicator found that the employee was provided with LES; and if reviewed, they would have alerted him to an error in the amount that was being withheld for FEHB premiums. The adjudicator noted that after the employee elected the change to his insurance plan, the deduction for premiums and the enrollment code reflected on his LES remained the same as prior to the change. Even if the employee had not expected an increase in salary because he was living overseas, he still should have questioned why there was no change in the cost of his premiums and the enrollment code as reflected on his LES when he had changed from one insurance plan to another.

In a letter dated July 22, 2010, the employee requested reconsideration of the appeal decision. He stated that although his BCBS claims were paid from 1997 through 2005, BCBS is attempting to collect benefits paid to him during the period January 12, 2002, through August 7, 2005. He attached an email from BCBS dated November 23, 2005, in which a BCBS representative states that the employee's membership file shows a lapse in coverage from January 12, 2002, through August 7, 2005, and explains that BCBS will be collecting from the employee all claims paid on his behalf during this period of time. The BCBS representative advises the employee to contact his payroll office to discuss the lapse and the possibility of fixing the dates of coverage. The BCBS representative advises him to then contact BCBS's recoupment department to explain that he is working with his payroll office and to stop all

proceedings of collection until his membership dates are fixed.

On August 11, 2010, our Office contacted the Defense Finance and Accounting Service (DFAS) requesting written documentation from BCBS regarding whether or not BCBS is still attempting to collect the claims they paid on the employee's behalf during the period January 12, 2002, through August 7, 2005. DFAS was unable to obtain the information directly from BCBS because BCBS would not provide it to anyone but the policyholder. Therefore, DFAS contacted the employee and requested that he, the policyholder, obtain this information from BCBS and provide it to our Office.

On January 5, 2011, our Office received the employee's response to the request. The employee did not provide the requested information. He states that it is unacceptable for DFAS to place the burden on him to disclose confidential health provider information. In addition, he states that he already provided this information to DFAS, and that the matter was resolved under DOHA Claim No. 02120912, dated April 21, 2003. He also states that DFAS has not provided any explanation or a detailed accounting of the additional increase in his indebtedness from \$6,829.32 to \$12,454.69. He states that the indebtedness increased after he appealed DFAS's denial of waiver in the amount of \$6,829.32 to DOHA. He states that DFAS has never provided a summary of how much he has repaid of the indebtedness, how much was paid to the incorrect health provider, if recovery action was ever taken against the incorrectly coded health provider and if any disciplinary action was taken against the individual(s) who were responsible for the indebtedness referred to in DOHA Claim No. 02120912. He states that DFAS has never provided him with names of the individuals responsible for "triggering" his indebtedness. He feels singled out by DFAS for excessive scrutiny and suggests that his status as a minority may be the reason for it.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). 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 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. 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. 2009-WV-091402.3 (December 30, 2009); DOHA Claims Case No. 09073001 (August 4, 2009); and Comptroller

General decisions B-243885, Aug. 27, 1991; B-202795, Dec. 1, 1981; and B-176231, Sept. 5, 1972.

In this case, the Government erred by not making the proper deductions; but administrative error, by itself, does not entitle the employee to a waiver. *See* DOHA Claims Case No. 09073001, *supra*. The employee acknowledged that he received LES during the period of overpayment. When the employee changed his health plan, he should have known that his premium deductions would change. The fact that his old health plan code and the identical deductions were still appearing on his LES should have alerted him that something was wrong. *See* B-202795, *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. The employee initially raised the issue that there was a lapse in coverage recorded on his BCBS member account. The employee was then given an opportunity to provide this Office with information clarifying his coverage and any liability he owes to BCBS. He chose not to provide the requested information. The email from BCBS sent in 2005 explains to the employee how to resolve the matter. The record reflects that claims were paid by BCBS on the employee's behalf during the period of overpayment. Therefore, there is no indication in the record that the employee did not have benefit of the coverage during the entire period of overpayment.

In DOHA Claim No. 02120912, dated April 21, 2003, our Office agreed with DFAS's recommendation to waive repayment of the employee's debt in the amount of \$364.65, resulting from an erroneous payment of basic salary made in PPE September 8, 2001. However, this indebtedness related to leave, not the under-deduction of his health insurance premiums. There is nothing in the record regarding whether or not BCBS has collected or is still attempting to collect the amount paid on the employee's behalf for claims during the alleged lapse in coverage.

Finally, the employee should contact DFAS with any questions about the calculation of his debt¹ and any concerns about the conduct of DFAS's processing of his pay account. We have no authority to consider such matters in this decision.

Conclusion

¹In DFAS's March 18, 2009, administrative report, the employee was advised that the debt amount being considered for waiver was \$6,829.32, which represented overpayments made to him during the PPE July 1, 2000, through August 6, 2005. DFAS explained that although the debt amount should be larger because it should extend back to the effective date of the health insurance plan change, November 15, 1997, they were unable to fully substantiate the debt prior to July 1, 2000. The employee appealed DFAS's denial of his waiver request to our Office. At that time, DFAS provided the information to substantiate the full debt amount of \$12,454.69.

The employee's request for relief is denied, and we affirm the June 30, 2010, appeal decision. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board