

KEYWORDS: Waiver of Indebtedness

DIGEST: Title 5, United States Code, § 5584 provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

CASENO: 2011-WV-032911.2

DATE: 11/03/2011

DATE: November 3, 2011

)	
In Re:)	
[REDACTED])	Claims Case No. 2011-WV-032911.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Title 5, United States Code, § 5584 provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

DECISION

An employee of the Navy requests reconsideration of the August 25, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-032911. In that decision, this Office denied waiver in the amount of \$7,502.48.

Background

The record shows that from December 2, 2004, through March 14, 2006, the employee's Federal Employee Health Benefit Plan (FEHB) premiums were paid by the Office of Workers' Compensation Program (OWCP) due to a work-related injury. On June 15, 2005, the employee initiated Standard Form (SF) 2809 electing to continue to participate in the FEHB, but changing her enrollment code for her Health plan to Self-only. The coverage became effective January 22, 2006; and on March 15, 2006, the employee returned to work. Beginning on that date, FEHB premiums should have been deducted from the employee's salary. However, due to an administrative error, no FEHB premiums were withheld from her salary during pay period ending (PPE) March 18, 2006, through January 30, 2010, causing an overpayment of \$7,507.48.

In her appeal request, the employee stated that she was surprised that the Defense Finance and Accounting Service (DFAS) denied her appeal on October 27, 2010, as six other departments were unable to detect the error. She stated that when she discovered the error, she immediately brought it to the attention of the appropriate officials. She stated that her Administrative Officer endorsed her waiver request and an official of OWCP acknowledged that they were at fault in the matter for not timely advising her personnel office that they were no longer responsible for paying the employee's FEHB premiums. She stated that she trusted the appropriate officials to do their jobs. She also stated that she should not be held at fault in the matter just because she failed to notice that deductions were not being made for FEHB premiums on her Leave and Earnings Statement (LES). She contends that waiver should be granted because an administrative error did occur.

The adjudicator noted that while an administrative error did occur, this 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. The adjudicator also noted that waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. If it were merely a matter of right, than virtually all erroneous payments made by the government to employees would be excused from repayment. The adjudicator noted that the record contained information that the employee acknowledged receiving her LES during the period of overpayment. A review of the LES reflects deductions were being made for FEHB premiums from the employee's salary in the amount of \$90.70 per pay period from PPE July 24, 2004, through November 27, 2004. A review of the information on her LES for the PPE March 18, 2006, which was the first pay period the employee returned to work, reflects no deductions for FEHB premiums. The adjudicator determined that waiver was not appropriate in a case such as this one, where the employee has records (such as LES) which, if reviewed, would indicate the existence of an error, and doesn't review them. Additionally, although the employee alleged that she was without coverage for a period of time as a result of this error, there is nothing in the record to substantiate that she did not have the benefit of the coverage for the FEHB during the period of the overpayment.

In her request for reconsideration the employee continues to contend that numerous offices of the government missed the error, and the fact that she did not notice the error should not be an indication that any fault lies with her. The employee contends that she has presented

enough evidence in her four attempts to receive a waiver. Actually, in her latest request, she presented no new evidence. She merely reiterated her argument that she should not be held at fault for the erroneous payments because an administrative error did occur.

Discussion

Title 5, United States Code, § 5584 provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. *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 an error. On the DD Form 2789, *Waiver/Remission of Indebtedness Application*, dated April 5, 2010, the employee admitted that she received LES. *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.

Moreover, it is not inequitable to require repayment because the employee had the benefit of the FEHB coverage that she elected during the period of overpayment. The employee alleged that she was without coverage for a period of time as a result of this error, but there is nothing in the record to substantiate this claim. In such circumstances, it is not inequitable for the employee to pay for that coverage. *See* DOHA Claims Case No. 07091703 September 20, 2007).¹

Conclusion

The employee's request for reconsideration is denied, and we affirm the August 25, 2011, appeal decision. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

¹ During the waiver process, the employee has raised questions regarding the insurance company's business practices concerning her previous unpaid premium payments. Those questions are outside the purview of this Office, and are irrelevant to a waiver determination under 5 U.S.C. § 5584.

Jean E. Smallin
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