

DATE: November 29, 2011

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In Re: )  
          [REDACTED] )     Claims Case No. 2011-WV-050304.2  
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Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 5 U.S.C. § 5584, waiver of the indebtedness that an employee incurs when the government fails to deduct Federal Employees Health Benefits Program premiums from her salary is not appropriate since the employee is partially at fault for not verifying the correctness of her leave and earnings statements. Moreover, it is not inequitable to require repayment when the employee had the benefit of the insurance coverage during the period when the government failed to collect the premiums.

**DECISION**

An employee requests reconsideration of the October 12, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-050304. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) to deny waiver of the employee's debt in the amount of \$4,023.93, for the overpayment of funds that should have been deducted from her salary for Federal Employees Health Benefits Program (FEHB) coverage.

**Background**

The record reflects that the employee elected FEHB coverage on October 9, 2008, by initiating Standard Form 2809 (SF-2809). The coverage became effective October 12, 2008. Due to an administrative error, the government failed to withhold FEHB premiums from the employee's salary from October 12, 2008, through March 27, 2010, causing an overpayment of \$4,023.93.

Although the employee acknowledges that she had the benefit of the FEHB coverage during the period of overpayment, she states that it was not until February 2010 when the pharmacy denied filling her prescription that she realized she was receiving overpayments. She further states that although she received leave and earnings statements (LES), she had no idea what the deduction for FEHB would look like on her LES. In her reconsideration request, she reiterates that when she elected FEHB coverage, she was a part-time employee and was unfamiliar with the codes for health insurance. When she finally became a full-time employee in October 2009, she states that she had endured so many payroll ordeals that she "fell to trusting the bottom line on her payroll statement." She points out that DFAS has made multiple errors in administering her pay account, to include not correctly coding her Thrift Saving Plan during the period of overpayment. She contends that DFAS should share responsibility because the error was made by their inability to properly code her FEHB coverage. She states that she was the one to bring the error to the attention of the appropriate officials. In addition, she takes issue with the amount of the overpayment. She states that she was initially notified that the overpayment was \$2,970.42. However, she is now being told the overpayment totals \$4,023.93, and no one has given her an explanation for this increase. Finally, she requests a correct accounting of the balance remaining on the debt.

### **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.

The government erred in not making the deductions; but administrative error, by itself, does not entitle the employee to a waiver. *See* DOHA Claims Case No. 02050613 (May 23, 2002); *see also* Department of Defense (DoD) Instruction 1340.23 ¶ E4.1.3 (February 14, 2006). The DOHA adjudicator applied the established rule that when an employee receives documents which, if reviewed, would indicate an overpayment of compensation, and the employee fails to review those records for accuracy or otherwise fails to take corrective action, she is deemed to be partially at fault, thereby precluding waiver. *See* DOHA Claims Case No. 09073001 (August 4, 2009); and DOHA Claims Case No. 07091703 (September 20, 2007). The adjudicator determined that since the employee filled out a SF-2809 electing FEHB coverage, she should have questioned when deductions for FEHB did not appear on her LES, especially since she

received her insurance card and a health insurance booklet which indicated the cost and the code for the FEHB coverage she elected. Therefore, the adjudicator reasonably concluded that the employee was partially at fault because she should have known that she was being overpaid.

Regarding the employee's suggestion that DFAS share responsibility for the indebtedness, there is no basis for apportioning fault under the waiver statute. An employee derives no entitlement to an erroneous payment of pay or allowances because the government makes a mistake. Moreover, the employee acknowledges that she received the benefit of the FEHB coverage during the period in question. The employee's FEHB coverage remained in effect throughout the period of overpayment and she made claims which were paid by the insurance company. Therefore, it is not against equity and good conscience to require her to pay her share of the premiums for the coverage she received. *See* DOHA Claims Case No. 07091703, *supra*.

Finally, financial hardship is not a factor in determining whether it is appropriate to grant waiver relief. *See* Instruction ¶ E4.1.7. The employee should contact DFAS to discuss the calculation of the debt, the balance remaining, and the possibility of extending repayment.

### **Conclusion**

The employee's request for reconsideration is denied, and we affirm the October 12, 2011, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board