

KEYWORDS: Waiver of Indebtedness

DIGEST: The U.S. Army paid Federal Employee Health Benefits (FEHB) premiums on the employee's behalf while he was in a leave without pay (LWOP) status. The employee was entitled to continued FEHB coverage, although he owed the Army for the premiums since he was in LWOP status. Since the employee was in a non-pay status, there were no erroneous payments made to him during that time, and his debt may not be considered for waiver under 5 U.S.C. § 5584.

CASENO: 2012-WV-102304.2

DATE: 03/26/2013

DATE: March 26, 2013

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In Re:)	
[REDACTED])	Claims Case No. 2012-WV-102304.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The U.S. Army paid Federal Employee Health Benefits (FEHB) premiums on the employee's behalf while he was in a leave without pay (LWOP) status. The employee was entitled to continued FEHB coverage, although he owed the Army for the premiums since he was in LWOP status. Since the employee was in a non-pay status, there were no erroneous payments made to him during that time, and his debt may not be considered for waiver under 5 U.S.C. § 5584.

DECISION

A former employee of the Army requests reconsideration of the February 7, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-102304. In that decision, DOHA affirmed an initial determination by the Defense Finance and Accounting Service (DFAS) in which DFAS properly concluded that the employee's debt cannot be considered for waiver under 5 U.S.C. § 5584.

Background

Effective September 21, 2005, the employee elected to enroll in FEHB coverage. On November 8, 2009, the employee was injured. As a result of his injury, the employee was placed in LWOP status during the pay period ending March 27, 2010. Since the employee was in a non-pay status, the Army paid his FEHB premiums on his behalf during the period March 14, 2010, through August 27, 2011. On August 19, 2011, the employee was removed from his position because he was no longer able to perform the duties of his position. Therefore, the employee became indebted in the amount of \$7,272.66 for the FEHB premiums paid on his behalf.¹

The employee states that at the time of his injury, his supervisor informed him that when he returned to work, he would be responsible for repayment of the premiums. However, he states that he was told that small amounts would be collected from his pay once he returned to work. The employee states that he was not informed by the Civilian Personnel Advisory Center (CPAC) that he could submit an election to terminate his FEHB coverage for his period of LWOP. He also states that although he was no longer qualified to perform the duties of his position, he was qualified to perform the duties of a desk job. He states that CPAC told him that they would do everything possible to place him in another position. However, he states that he believes CPAC did not do everything they could to keep him as a government employee.

Discussion

We have authority to waive collection of “an erroneous payment of pay or allowances” if collection would be against equity and good conscience and not in the best interest of the United States. *See* 5 U.S.C. § 5584 (a). Because there is no “erroneous payment” involved here, waiver cannot be considered. *See* Comptroller General decision B-244575 (Dec. 11, 1991).

Even if waiver could have been considered under 5 U.S.C. § 5584, waiver of the indebtedness would not be appropriate. The employee had the benefit of the health insurance coverage while he was on LWOP and knew he was responsible for repayment of the premiums once he returned to work. *See* DOHA Claims Case No. 2011-WV-050304.2 (November 29, 2011).

¹Under 5 C.F.R. § 890.502(b), the employee was responsible for payment of the premiums for every pay period that his health insurance enrollment continued, *i.e.*, March 2010 through August 2011.

Conclusion

We affirm the February 7, 2013, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board