

DATE: January 23, 2015

In Re:

[REDACTED]

Claimant

)
)
) Claims Case No. 2013-WV-072306.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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

DECISION

A former employee of the Army requests reconsideration of the November 18, 2014, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-072306. 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 December 15, 2010, the employee elected to enroll in FEHB coverage. In September 2011 the employee was placed in LWOP status. Since the employee was in a non-pay status, DoD paid her FEHB premiums on her behalf during the pay period ending (PPE) September 24, 2011, through March 10, 2012. On July 13, 2012, the employee was removed

from federal service. Therefore, the employee became indebted in the amount of \$1,408.79 for the FEHB premiums paid on her behalf.¹

In her request for reconsideration, the employee states that DFAS originally cancelled the indebtedness and later decided to collect it. In addition, she states that DFAS gave her several different amounts concerning her indebtedness. She states that the Office of Personnel Management (OPM) waived her debt and had the same statutory requirements for waiver. Finally, she wants to know why DFAS gave her appeal rights to DOHA when DOHA had no jurisdiction over the matter.

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). Since the employee here was in a nonpay status, there were no erroneous payments made to her. Therefore, waiver cannot be considered because the employee does not meet the statutory requirements. *See* DOHA Claims Case No. 2012-WV-102304.2 (March 26, 2013); and Comptroller General decision B-244575 (Dec. 11, 1991). We note that in cases where the employee is in a pay status and is overpaid salary because either FEHB premiums were not deducted from her pay or an under-deduction of FEHB premiums occurred, we have the authority to consider the resulting erroneous payments of salary for waiver. *See* DOHA Claims Case No. 2011-WV-050304.2 (November 29, 2011); DOHA Claims Case No. 2011-WV-032911.2 (November 3, 2011); and DOHA Claims Case No. 09073001 (August 4, 2009).

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 she was on LWOP. In addition, the record reflects that she knew she was accruing a debt for the prepaid FEHB premiums by her agency. In fact, she contacted DFAS on several occasions requesting an accounting of her indebtedness during the period of overpayment. Further, her leave and earnings statements (LES) reflect that FEHB premiums were being prepaid by her agency due to insufficient pay and that this debt must be repaid. Therefore, she was on notice that she was responsible for repayment of the premiums. *See* DOHA Claims Case No. 2011-WV-050304.2, *supra*; and DOHA Claims Case No. 07122805 (January 7, 2008).

Although OPM waived the employee’s debt for the period of March 21, 2012, through July 30, 2012, they did so under their own authority as set forth under 5 U.S.C. § 8470(b) and 5 C.F.R. § 845.301. We also note that the overpayment that occurred during this period resulted from the employee’s interim annuity payments being miscalculated. OPM approved the employee’s application for disability retirement under the Federal Employees Retirement System (FERS) on August 2, 2012. OPM began paying the employee interim payments at a rate that should have been less than the employee’s actual earned annuity in order to place the employee

¹Under 5 C.F.R. § 890.502(b), the employee was responsible for payment of the premiums for every pay period that her health insurance enrollment continued, *i.e.*, September 2011 through March 2012.

in a pay status immediately while they determined the full amount the employee was eligible to receive. OPM advised the employee that they use the lower rate to avoid an overpayment which would have to be recovered from the employee's future annuity payments. OPM further advised the employee that the estimated amount for interim annuity payments did not include deductions for health benefits. OPM then discovered that they had overpaid the employee \$1,914.77 in interim payments. OPM later discovered that the employee owed \$467.21 for health benefits premiums for the period March 20, 2012 (her annuity commencing date) through July 15, 2012 (the day OPM began withholding premiums from her disability annuity payments). Although OPM subsequently waived the overpayment in the amount of \$2,381.98 (\$1,914.77 + \$467.21), they did so under their own authority. Under their authority, we note that there is no requirement that the overpayment result from an erroneous payment of pay or allowances.

Conclusion

We affirm the November 18, 2014, 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