

DATE: January 21, 2015

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2013-WV-121802.2  
)  
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of 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 interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

**DECISION**

An employee of the U.S. Army requests reconsideration of the December 16, 2014, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-121802. 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 \$3,576.24, for the overpayment of funds that should have been deducted from his salary for Federal Employees Health Benefit Plan (FEHB) coverage.

**Background**

On March 4, 2009, a *Notification of Personnel Action*, SF-50, was issued placing the employee in a leave without pay (LWOP) status due to his call to active duty military service effective March 2, 2009. The employee elected to retain his FEHB coverage during the length of his active duty service, or for a period of 24 months, whichever came first. This was noted in the remarks section of the SF-50, which specifically states:

I want to incur a debt to be paid upon my return to duty. I understand that if I continue my FEHB after the first 12 months, I will pay 102% of the cost and it must be paid currently for the final 6 months.

DFAS advised us that the employee's FEHB coverage continued for 24 months from March 2, 2009, through March 2, 2011. On March 3, 2011, his coverage terminated. He remained on active duty military service from March 2, 2009, through October 2, 2011.

On October 3, 2011, the employee returned to duty and elected that his FEHB coverage be reinstated. However, due to an administrative error, no FEHB premiums were withheld from his salary during the pay period ending (PPE) October 22, 2011, through June 30, 2012, resulting in an overpayment of \$3,576.24.

The employee requested waiver of the overpayment asserting that he was unaware that his FEHB premiums were not being deducted until July 2012. DFAS denied the employee's waiver request on the basis that he had the benefit of the coverage during the period FEHB premiums were not being deducted. DFAS further noted that if the employee had reviewed his leave and earnings statements (LES), he would have noticed that FEHB premiums were not being deducted.

The employee appealed DFAS's denial of his waiver request. The employee stated that his coverage was terminated and his *BlueCross/BlueShield Explanation of Benefits* reflects that he was not covered through November 2011. He stated that he was responsible for all claims made during the period he was not covered. He attached a notification from BlueCross/BlueShield (BCBS) reflecting that he was disenrolled and therefore, he believed that no premiums should have been deducted from his salary. In the appeal decision, the DOHA adjudicator carefully reviewed the file and found no evidence that the employee did not have FEHB coverage during the PPE October 22, 2011, through June 30, 2012. The adjudicator also determined that since the employee requested that his FEHB coverage resumed effective October 3, 2011, he reasonably should have expected FEHB premiums to be deducted from his salary for the coverage he requested. As for the notification letter from BCBS, the adjudicator found that this notification was dated December 11, 2011, and was a bill for \$513.02 for medications filled during the period April 5, 2011, through September 29, 2011. The adjudicator pointed out that the employee was entitled to continue his FEHB coverage for up to 24 months while in an active duty military service status. Therefore, the employee had FEHB coverage while in a LWOP status from March 2, 2009, through March 2, 2011. His coverage then terminated on March 3, 2011. The adjudicator noted that the employee was advised on his *Notification of Personnel Action*, SF-50, that if he continued his FEHB coverage after the first 12 months, he was obligated to pay 102% of the cost of the coverage. The adjudicator also noted that the period the employee did not have coverage, March 3, 2011, through October 2, 2011, corresponded with the April 5, 2011, through September 29, 2011, prescription dates noted in the BCBS bill.

In the employee's reconsideration request, he attaches an email he sent to DFAS on November 1, 2014. Apparently this email was in response to the DOHA adjudicator's request for information sent to the employee through DFAS on October 27, 2014. DFAS never forwarded the employee's email to our office. However, we do note that when our office

received the employee's request for reconsideration, the DOHA adjudicator reviewed the employee's submission and determined that it did not affect her decision in the case. We will review the employee's submission as part of his request for reconsideration. The employee acknowledges that he focused on the incorrect time period for when he was denied coverage and billed by BCBS. He contends that the overpayment period in question was so confusing that waiver should be granted. He states that the LES for the PPE October 22, 2011, reflects two separate deductions for FEHB in the amount of \$199.20 each. He states that the LES for the PPE November 5, 2011, reflects that he was credited with \$199.20. Therefore, he states that he assumed that a correction had been made for being charged the double deduction.

### **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 interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review those documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will not be granted.

We accept the employee's argument that there was some confusion in October 2011 and November 2011 concerning his FEHB premium deductions. A review of the employee's LES for the PPE October 22, 2011, reflects a deduction for FEHB in the amount of \$199.20. It does not reflect a double deduction in this amount. However, there is a deduction for prepaid FEHB premium collection in the amount of \$199.20. Therefore, when the employee received his LES for the PPE November 5, 2011, reflecting that he was given a refund of \$199.20 for FEHB premium deduction, he may have reasonably believed he was entitled to this refund. Therefore, we waive \$398.40 for the PPE October 22, 2011, through November 5, 2011.

Once the employee received his LES for the PPE November 19, 2011, and there was no deduction listed for FEHB premiums, he should have at least questioned the matter. In this regard, the employee elected to retain his FEHB coverage during the length of his active military service, or for a period of 24 months, whichever came first. He acknowledged that if he continued his FEHB coverage after the first 12 months, he would pay 102% of the cost and he would incur a debt when he returned to civilian duty. When he returned to duty as a civilian employee, he filled out a *Checklist for Technicians Returning from Active Military Duty*. On this document, the employee elected to not make changes to his health insurance and requested that deductions resume upon his return. Therefore, when no FEHB deductions were listed on his LES, the employee had a duty to bring this to the attention of the proper authorities, especially since he had documentation reflecting that he had FEHB coverage effective October 2011. See DOHA Claims Case No. 2011-WV-050304.2 (November 29, 2011); and DOHA Claims Case No. 2011-WV-032911.2 (November 3, 2011).

## Conclusion

We hereby waive \$398.40 and deny waiver of \$3,177.84. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action 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: Gregg A. Cervi

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Member, Claims Appeals Board