

DATE: December 13, 2016

---

In Re:

[REDACTED]

Claimant

---

)  
)  
)  
)  
)

Claims Case No. 2016-WV-110704.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A U.S. Air Force employee was called to active duty in support of a contingency operation. As a result, the employee became eligible to elect to continue his Federal Employee Health Benefits (FEHB) coverage and have the Air Force pay his share and the Government's share of premiums while he was in a non-pay status serving in the uniformed services. It was later determined that the employee was not eligible to have the Air Force pay his FEHB premiums. Therefore, the employee was responsible for payment of his FEHB premiums and became liable for the FEHB premiums paid on his behalf. The resulting debt may not be considered for waiver under 5 U.S.C. § 5584, since the debt occurred while the employee was in a non-pay status and no erroneous payments were made to him.

**DECISION**

An employee of the U.S. Air Force requests reconsideration of the November 23, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-110704. 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**

The employee elected to enroll in FEHB coverage, and proper premiums were withheld from his salary. In March 2015 the employee was called to active duty in support of a contingency operation. As a result, on April 6, 2015, the employee was placed in an Absent – Uniformed Service/leave without pay (LWOP) status and entitled to elect to continue FEHB

coverage with the Air Force paying both his share and the Government's share of premiums for up to 24 months. The employee subsequently elected to continue FEHB coverage. However, in June 2015 the Air Force determined that the employee should not have been called to active duty in support of a contingency operation, and his orders were amended to reflect that he was called to active duty in non-contingency support status. Active duty in support of a non-contingency operation does not authorize an employee to have his FEHB premiums paid by the employing agency. Therefore, the employee became indebted for the FEHB premiums paid on his behalf during the pay period ending (PPE) April 18, 2015, through July 25, 2015, in the amount of \$1,187.68.

In his request for reconsideration, the employee states that in March 2015 he was briefed that his FEHB premiums would be paid by his agency while on contingency orders from March 2015 through July 2015. He states that he was not told that his orders would be changed to non-contingency until June 2015, three weeks prior to returning to the United States. He states that it is unfair for the Government to change a lawful order after it has been legally executed. He states that he would have made a different decision concerning continuing his FEHB coverage if he had known his orders were non-contingency. He acknowledges that 5 U.S.C. § 5584 does not apply but seeks another avenue of redress.

### **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 non-pay status, there were no erroneous payments made to him. Therefore, waiver cannot be considered because the employee does not meet the statutory requirements. *See* DOHA Claims Case No. 2013-WV-072306.2 (January 23, 2015) and DOHA Claims Case No. 2012-WV-102304.2 (March 26, 2013). 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.

We know of no authority within the Department of Defense that would address the employee's issue. In this regard, the statute and regulations make it clear that once a member ceases to be on orders for a contingency operation, payment of Government and employee contributions to FEHB terminates. *See* 5 U.S.C. § 8906(e)(3) and 5 C.F.R. § 890.502(f)(2). Further, as set forth under the Department of Defense Financial Management Regulation (DoDFMR), Volume 8, paragraph 110303A.3., if status changes to non-contingency during the employee's active duty service, a debt will incur. For more information on the extended coverage to Federal employees called to active duty in support of a contingency operation, the employee may wish to consult the Office of Personnel Management's website at <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2006/06-401.pdf>.

## Conclusion

We affirm the November 23, 2016, 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