

April 21, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00032801

CLAIMS APPEALS BOARD DECISION

DIGEST

After a period of ineligibility, an employee became eligible for health insurance. Coverage began, but premiums were not deducted from his salary. The premiums for approximately 22 months of coverage were retroactively assessed. Waiver of the resulting debt under 5 U.S.C. § 5584 is denied since the employee is not without fault in that he failed to verify the correctness of his pay on his Leave and Earnings Statements. It is not inequitable to require repayment, since the employee had the benefit of coverage and filed insurance claims during the period in question.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 00013104 dated March 13, 2000, which denied the waiver request of a civilian employee of the Department of Defense. The employee's debt arose when health insurance premiums were not deducted from his salary.

Background

On December 4, 1995, the employee completed Standard Form (SF) 2809 to enroll in the Mail Handlers' Health Insurance Plan effective January 7, 1996, and premiums were withheld from his salary until he was terminated on March 31, 1996. He was rehired on May 13, 1996; but since the latter job was a summer appointment intended to end by September 30, 1996, his Notification of Personnel Action (SF-50) for that period indicated that he was not eligible for health insurance coverage. Effective October 1, 1996, the employee's job was converted to a temporary appointment intended to end by March 31, 1997. The relevant SF-50 stated that he was not eligible for health insurance until he completed one year of current continuous employment. It indicated that at that time he could elect insurance benefits and would be charged for the full premiums. Effective April 1, 1997, the employee's temporary appointment was extended for a period not to exceed March 31, 1998, and he was therefore eligible for health insurance coverage effective October 12, 1997. Although there is no evidence in the file that he completed another SF 2809 to re-enroll in a health insurance plan, his agency apparently enrolled him in the Mail Handlers' Health Insurance Plan, but did not begin deducting premiums from his salary. When that error was discovered, the agency retroactively held him liable for the premiums for the period from October 12, 1997, until August 14, 1999, resulting in a debt of \$7,525.74. The employee used the insurance coverage to file claims for medical care during the period in question. He argues that the debt should be waived because he was unaware that premiums were not being withheld from his pay. He says that he assumed premiums were being deducted because the medical claims he filed were paid. He states that he did not check his leave and earnings statements (LES) regularly because he did not understand them, but relied on his supervisor to verify that he was paid properly.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The standard we use to determine fault is whether a reasonable person would have known or should have known whether he was being overpaid. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). Our decisions and those of the Comptroller General indicate that waiver is not appropriate when an employee has records which indicate an overpayment and fails to review such documents for accuracy or otherwise fails to take corrective action. *See* DOHA Claims Case No. 98120401 (March 4, 1999), and *Sheldon H. Avenius, Jr.*, B-226465, Mar. 23, 1988. Our decisions and those of the Comptroller General stress the importance of an employee's monitoring of his LES. If the employee does not monitor his LES, he is considered to be at least partially at fault for payroll errors which could have been averted by his diligence, and waiver of the resulting debt is not appropriate. *See* DOHA Claims Case No. 98120401, *supra*; *Sheldon H. Avenius, Jr.*, B-226465, *supra*; and *Roosevelt W. Royals*, B-188822, June 1, 1977.

In the case before us, the employee received LES which indicated that insurance premiums were not being deducted from his pay between October 12, 1997, and August 14, 1999. He had a duty to review his LES to verify that proper deductions were being made from his pay. Since the employee had information at his disposal that indicated that he was being overpaid and thus could have ended the overpayments by contacting his payroll office, he is at least partially at fault for the continuation of the overpayments. Waiver is not appropriate in such a situation *See* DOHA Claims Case No. 98120401, *supra*; and *Avenius*, B-226465, *supra*. While he states that he relied on his supervisor to verify details on his LES and did not understand the information on it, the responsibility to monitor his pay rested with him, and if he did not understand his LES, he should have asked his supervisor or other knowledgeable person to explain it to him. While the employee did not complete an SF 2809 to re-start insurance coverage, he filed insurance claims during that period and therefore should have expected premiums to be deducted for his coverage. Since he had the benefit of health insurance coverage, it is not inequitable for him to pay the premiums for the period in question. *See Raymond S. Lau*, B-203458, Sep. 29, 1981.

Conclusion

We affirm the Settlement Certificate.

/s/

Christine M. Kopocis

Acting chairman, Claims Appeals Board

/s/

Michael H. Leonard

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board