July 19, 2001

In Re:

[Redacted]

Claimant

Claims Case No. 00111319

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee transferred to an overseas duty station, health insurance premiums erroneously ceased to be deducted from his pay. Waiver of the resulting debt under 5 U.S.C.

§ 5584 is denied because the employee should have reviewed his leave and earnings statements in sufficient detail to detect the error and is therefore partially at fault in the accrual of the debt.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claims Case No. 00090803, dated October 18, 2000, which denied a DoD employee's request for waiver. The employee's debt arose when health insurance premiums ceased to be deducted from his pay.

Background

Effective August 17, 1997, at about the time of his transfer to Moscow, the employee changed from one health insurance plan to another. Due to administrative error, the Defense Finance and Accounting Service (DFAS) ceased to deduct insurance premiums at that time. The failure to deduct premiums continued until January 2, 1999, causing an

overpayment of $1,971.38. In the Settlement, we waived $100.16 for the period from August 17, 1997, through September 13, 1997, because the employee did not receive leave and earnings statements (LES) during that period. The amount under consideration here is therefore $1,871.32.

The employee argues that his debt should be waived because DFAS caused the error. He contends that the DOHA and Comptroller General decisions cited in the Settlement Certificate as precedent for denying his request (DOHA Claims Case No. 98120401 (Mar. 4, 1999), and *Sheldon H. Avenius, Jr.,* B-226465, Mar. 23, 1988) are not applicable to his situation. He points out that in *Avenius* the erroneous overpayment was obvious, while in his situation in his view it was hidden. Furthermore, he argues that his transfer to Moscow was stressful and that the culture shock he experienced hindered him from discovering the erroneous payments he was receiving. In support of his request, he has submitted a letter from a psychologist who has studied culture shock. Through the psychologist, he argues that his situation is similar to that in DOHA Claims Case No. 00062601 (Sept. 19, 2000), in which an employee's debt was waived.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive erroneous payments 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, misrepresentation, fault, or lack of good faith on the part of the employee. The standard we employee to determine fault is that of a reasonable person; if a reasonable person would or should have known that he was receiving payments in excess of his entitlements, waiver is not proper. *See* 4 C.F.R. § 91.5 (1996). When an employee receives information such as LES which, if reviewed, would put him on notice of an error in the calculation of his pay, he is considered to be at least partially at fault in the accrual of the resulting debt if he does not review the information. Waiver is not appropriate in such a situation. *See* DOHA Claims Case No. 98120401, *supra;* and *Simon B. Guedea,* B-189385, Aug. 10, 1977.

The principle that an employee has a responsibility to verify the accuracy of information found in his LES is well established. In the case before us, the employee had changed from one Federal Employees' Health Benefits (FEHB) plan to another at approximately the same time he transferred to Moscow. It is our view that a reasonable person would have carefully reviewed his LES as soon as he began receiving them at his new duty station, paying particular attention to whether his FEHB premiums had changed to reflect the plan change he had made. Since he had information, in the form of LES, which would have put him on notice of the error, he is partially at fault in the accrual of the debt, and the debt cannot be waived. The fact that DFAS's administrative error was the immediate cause of the overpayment does not relieve the employee of fault in such a situation. *See* DOHA Claims Case No. 98112018 (January 11, 1999).

The employee believes that his situation is distinguishable from those in DOHA Claims Case No. 98120401, *supra,* and *Sheldon H. Avenius, Jr.,* B-226465, *supra*, which were cited in the Settlement Certificate. We view those decisions as applicable to the employee's situation. In both those cases, DFAS erroneously ceased deducting insurance premiums from an employee's pay at the time of a transfer-one upon a transfer overseas and one upon a return to the United States. We do not make the distinction the employee makes between obvious and hidden errors. He points out that on the LES he received until April 1996, there was a specific box where the FEHB premium was recorded. If the box did not contain an entry, the error was obvious. On the LES in use since 1996, the deductions actually made are listed individually, but there are no spaces left for non-applicable deductions.[(1)] Since a careful review would have revealed that FEHB deductions had been listed on his LES and then ceased to appear, we do not view the error as hidden.

The employee has submitted a letter from a psychologist who has studied the stress which moving into another culture can cause, although it does not appear that she had any personal contact with the employee while he was in oscow or

later. She compares the employee's situation with that in DOHA Claims Case No. 00062601 (Sept. 19, 2000), in which we waived a debt which arose from errors in an employee's pay which occurred when he was transferred to the United States from overseas. In that case the employee was under a doctor's care for a life-threatening illness. The psychologist indicates that, as a hypothetical matter, the employee's transfer may have hindered his ability to check his LES and that his debt should therefore be waived. The case before us is distinguishable from DOHA Claims Case No. 00062601, *supra*. There is no indication that the employee before us was under a doctor's care for a life-threatening illness, as in 00062601, or that he was diagnosed with a severe mental or physical impairment. *See, e.g., Lieutenant Colonel Joseph D. McDonald, USAR, Retired,* B-217914, June 25, 1986. We do not view a government employee's transfer, even to a remote duty station, as causing the degree of mental or physical impairment which would relieve him of the responsibility to review his LES.

Finally, when an employee has elected a benefit which has a cost attached to it, he should expect to pay the cost. If a debt arises because he is not charged the proper amount in a timely manner (*e.g.,*through payroll deductions), it is not inequitable to require him to pay the cost when the error is detected. The Comptroller General discussed that principle in the context of life insurance in *Frederick D. Crawford,* 62 Comp. Gen. 608 (1983). The employee's health insurance election form is in the administrative report before us, and there is no indication in the report that he cancelled his coverage. Since it thus appears that the employee had the benefit of insurance coverage, waiver, which is an equitable remedy, is not available to him. If the employee believes that he has a legal defense against the debt, he may address that issue in the proper administrative or legal forum.

Conclusion

We affirm the Settlement Certificate.

/s/

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Michael D. Hipple

Chairman, Claims Appeals Board

/s/

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Christine M. Kopocis

Member, Claims Appeals Board

/s/

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Jean E. Smallin

Member, Claims Appeals Board

1. The LES involved in DOHA Claims Case No. 98120401, *supra,* is similar to those of the employee before us at the time of the accrual of his debt.