

KEYWORD: General; waiver of indebtedness

DIGEST: At the time she changed agencies, an employee's health insurance coverage was erroneously changed from the plan she had elected to a less expensive plan. The error was not discovered for over five years. Waiver of the resulting debt under 5 U.S.C. § 5584 is denied since the employee is partially at fault for not verifying the correctness of the Leave and Earnings Statements she received regularly.

CASENO: 02040401

DATE: 05/21/2002

May 21, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02040401

CLAIMS APPEALS BOARD DECISION

DIGEST

At the time she changed agencies, an employee's health insurance coverage was erroneously changed from the plan she had elected to a less expensive plan. The error was not discovered for over five years. Waiver of the resulting debt under 5 U.S.C. § 5584 is denied since the employee is partially at fault for not verifying the correctness of the Leave and Earnings Statements she received regularly.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 02010727, dated January 30, 2002, which denied an employee's waiver request in the amount of \$431.33. The debt arose when incorrect amounts were withheld from the employee's pay for health insurance.

Background

In 1982, the employee elected Blue Cross Blue Shield Health Insurance (Blue Cross) coverage, and the proper deductions from her pay were initiated. When the employee's records were transferred from one payroll office to another as of November 12, 1995, her health insurance coverage was erroneously changed from Blue Cross (code 104) to Kaiser (code 621). Since Kaiser was less expensive than Blue Cross, the employee was overpaid by the amount of the difference between the two premiums. The error continued from November 1995 until January 27, 2001, although the employee is only being held liable for the period after June 22, 1997, due to a lack of detailed records for the earlier period. At the time the error first occurred, the amount of the overpayment was only \$0.39 per pay period, but by January 2001 the difference had increased to \$3.83 per pay period. The error was discovered in January 2001, shortly before the employee was scheduled for surgery. The employee indicates that Blue Cross stated at that point that according to their records her Blue Cross coverage had terminated in November 1995, when the error occurred. The error was then retroactively corrected to reflect the employee's 1982 election of Blue Cross. The employee contends that waiver should be granted because the error was caused by the Defense Finance and Accounting Service (DFAS). She does not think she should be held responsible for identifying an error which at the beginning was only \$0.39 per pay period. She emphasizes the stress that she experienced when she was told by Blue Cross shortly before she was to undergo surgery that she did not have insurance.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of 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 or should have known that she was receiving pay in excess of her entitlements. *See Standards for Waiver*, 4 C.F.R. § 91.5 (1996). Our decisions and those of the Comptroller General indicate that waiver is not appropriate if the employee is provided information such as Leave and Earnings Statements (LES) which indicate the existence of error. *See* B-203458, Sept. 29, 1981; and B-188822, June 1, 1977.

In the case before us, the employee states that she changed organizations as well as finance centers in November 1995 when DFAS erroneously changed her insurance company from Blue Cross to Kaiser. While at first the error amounted to only \$0.39 per pay period, in our view a reasonable person would have checked her LES carefully at the time of a job change to look for errors. ⁽¹⁾ While \$0.39 is not a large difference in pay, the difference in the code number along with an unfamiliar deduction amount should have prompted the employee to verify the deduction. *See* DOHA Claims Case No. 98112018 (January 11, 1999), which was affirmed by the Department of Defense Deputy General Counsel (Fiscal) on April 4, 2001. ⁽²⁾ *See also* B-202795, Dec. 1, 1981; B-203458, *supra*; and B-188822, *supra*. ⁽³⁾ While we agree that the overpayments were the result of administrative error, that fact by itself does not entitle the employee to waiver. Waiver is an equitable remedy, and equity is not available to a party who is not entirely without fault. Since the employee in the case before us is not entirely free of fault, waiver cannot be granted. *See* DOHA Claims Case No. 98112018, *supra*.

Finally, we point out that the employee had the benefit of Blue Cross coverage for the period in question. As she states, insurance coverage cannot be changed unless an employee fills out Standard Form (SF) 2809. While she states that she did not use her insurance or file a medical claim during the period in question, Blue Cross coverage would have been made available to her during that period just as it was in January 2001 when she attempted to use her Blue Cross coverage for surgery. ⁽⁴⁾ While we understand that it was stressful for the employee to learn of the error at that particular time, that circumstance does not entitle her to waiver. Prior decisions indicate that it is not inequitable for an employee to pay for coverage which she elected. Therefore, waiver of the premiums is not appropriate. *See* DOHA Claims Case

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. The LES is not the only source of information on insurance premium deductions. Before the beginning of each payroll year, the Office of Personnel Management (OPM) publishes information on the premiums for the upcoming year. In our view a reasonable person, even if she did not intend to change her insurance, would verify at the beginning of each payroll year that the correct amount was being deducted. As noted above, while at first the error was only \$0.39 per pay period, by the time the error was discovered, the error had increased to \$3.83 per pay period.

2. In that decision the error involved was a step increase. As in the case before us, however, the error occurred at the time of a job change. The principle that an employee is expected to review her LES thoroughly applies to all payroll entries.

3. These three cases involve errors in deductions for health insurance. While the exact circumstances surrounding the

errors may differ from the case at hand, all three cases stress the importance of an employee's verification of the information on her LES.

4. The employee states that when the error was discovered in 2001, her insurance was retroactively cancelled as of 1995 and then reinstated a week later. While it may have taken a week to correct the necessary paperwork, the employee had continuous Blue Cross coverage, since she had elected Blue Cross as her insurance carrier and had never changed her election.