

KEYWORDS: waiver of indebtedness

DIGEST: When an employee is aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment. In such circumstances, waiver is not appropriate.

CASENO: 07052301

DATE: 5/30/2007

DATE: May 30, 2007

In Re:)
) [REDACTED])
)) Claims Case No.07052301
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee is aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment. In such circumstances, waiver is not appropriate.

DECISION

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 07041304, dated April 23, 2007, which denied the employee's request for waiver of erroneous payments of salary in the amount of \$8,951.30.

Background

The employee elected Blue Cross Blue Shield Federal Employee's Health Benefits (FEHB) plan coverage effective May 13, 1973, and proper deductions were subsequently withheld from his salary. On December 15, 1983, the employee was placed on the Office of Workers' Compensation Program (OWCP) payroll, and FEHB premiums were paid by the OWCP. When the employee returned to work on December 22, 1997, FEHB premiums should have been deducted from his salary. Due to an administrative error, FEHB premiums were not withheld from his salary from December 21, 1997, through October 19, 2002, causing an overpayment in the amount of \$8,951.30.

Our Office denied waiver of the overpayment because the employee was aware that his health insurance premiums were not being deducted from his salary. In his request for reconsideration, the employee states that his personnel office did not file the proper paperwork to continue his premium deductions. He made numerous attempts to get the error corrected and was assured each time that it had been handled. He states that he relied on his personnel office and should not be held accountable for their mistake. He also states that repayment would create a financial burden on his family.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver under 5 U.S.C. § 5584 does not apply automatically to relieve the debts of all employees who, through no fault of their own, receive erroneous payments from the government. An employee is not entitled to waiver as a matter of right merely because he was overpaid due to administrative error. If an employee knows, or should know, that he is receiving payments in excess of his entitlement, he does not acquire title to the excess amounts and should be prepared to return them. *See* DOHA Claims Case No. 06122101 (January 8, 2007); and DOHA Claims Case No. 98120401 (March 4, 1999).

In the present case, the employee states that he was diligent in his efforts to get the matter resolved. Although he acted properly in notifying the appropriate officials and continuing to try to resolve the matter, waiver is still not appropriate in this case. When an employee is aware of receiving overpayments he cannot reasonably expect to retain them. Under these circumstances, he does not acquire title to the excess payments and has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 06122101, *supra*.

In addition, as noted by the DOHA adjudicator in the appeal decision, the employee had the benefit of coverage for the FEHB during the period of overpayment. It is not inequitable for an employee to pay for coverage which he elected. *See* DOHA Claims Case No. 03101402 (October 20, 2003).

Although the employee may be experiencing financial hardship, financial hardship does not provide a basis for waiver. *See* DOHA Claims Case 06122101, *supra*.

Conclusion

The member's request for relief is denied, and we affirm the April 23, 2007, decision to deny waiver. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board