

KEYWORDS: waiver of indebtedness; health insurance premiums

DIGEST: A waiver usually is not appropriate when the recipient knows, or reasonably should know, that a payment is erroneous. An employee who had just requested a change from single Federal Employees' Health Benefit Plan (FEHB) coverage to family FEHB coverage but who continues to receive substantially the same net pay as he had received before the family coverage became effective, is alerted to the possibility that the deduction at the new, higher rate for family coverage did not take place and that he is being overpaid.

CASENO: 07052404

DATE: 6/5/2007

DATE: June 5, 2007

In Re: ) [REDACTED] ) Claimant )	Claims Case No.07052404
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A waiver usually is not appropriate when the recipient knows, or reasonably should know, that a payment is erroneous. An employee who had just requested a change from single Federal Employees' Health Benefit Plan (FEHB) coverage to family FEHB coverage but who continues to receive substantially the same net pay as he had received before the family coverage became effective, is alerted to the possibility that the deduction at the new, higher rate for family coverage did not take place and that he is being overpaid.

## DECISION

An Air National Guard employee<sup>1</sup> requests reconsideration of the March 29, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07021601. In that decision, our adjudicator affirmed the Defense Finance and Accounting Service (DFAS)'s denial of the employee's request that the government waive collection of the erroneous overpayment of \$7,679.69 in salary.

### Background

The record shows that on September 7, 2001, the employee initiated Standard Form 2809 to change his Federal Employees' Health Benefit Plan (FEHB) coverage in Blue Cross Blue Shield's Service Benefit Plan from the single plan to the family plan, with the family coverage becoming effective on September 9, 2001. However, due to administrative error, DFAS failed to increase the employee's health insurance premiums during the period September 9, 2001, through June 24, 2006, causing an overpayment of \$7,679.69.

In denying waiver relief, DOHA's adjudicator considered the employee's claim that he could not detect a reduction in his net income because he was receiving overtime and night differential. The adjudicator reviewed the employee's master pay history and found that on the pay period ending September 8, 2001, the last pay period in which single plan premiums should have been deducted from the employee's gross salary, the employee's gross salary was \$1,851.20, his net salary was \$1,256.15, and \$34.26 was deducted for health insurance premiums. In the pay period ending September 22, 2001, which was the first pay period after the employee's requested change in coverage, these figures were substantially the same: \$1,851.20 gross salary, \$1,256.14 net salary, and \$34.26 as the deduction for health insurance. DFAS failed to adjust the employee's health insurance premiums for family coverage until 2006.

In his reconsideration request, the employee acknowledges that his pay did not decrease and that health insurance cards were issued and insurance was never denied to him or his family members. However, he claims that he cannot determine from the codes on the leave and earnings statement what he was paying for: single or family coverage. Thus, because the standard is whether a reasonable person would be aware that he is receiving in excess of his proper entitlements, and the codes used (104 and 105) did not indicate which coverage it pertained to, a reasonable person would not know whether he had exceeded his entitlements. In the alternative, the employee argues that since the government is partially at fault, the employee's liability should be reduced accordingly.

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<sup>1</sup>The employee is represented by [REDACTED], a unit deputy staff judge advocate.

## Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay or 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. *See also* DoD Instruction 1340.23 (February 14, 2006) (Instruction) ¶ E4.1.2. Waiver is precluded if the employee is aware or should have been aware that he was being overpaid. *See* Instruction ¶ E4.1.4. *See also* DOHA Claims Case No. 06122101 (January 8, 2007); and DOHA Claims Case No. 98120401 (March 4, 1999). Here, the adjudicator had a reasonable basis for concluding that the employee knew or should have known that he was being paid more than his proper entitlement. Irrespective of the codes used, on pay day for the first pay period under family coverage, the employee should have reasonably expected a significant reduction in net pay compared to what he had received at the end of the previous pay period, to pay for the more expensive family insurance coverage. When he received almost the exact net pay (one cent difference) as he received two weeks earlier at the end of the last pay period of single coverage, this should have alerted him to inquire about whether the proper health premium deduction had been applied. The Board also finds unpersuasive the employee's current argument that he did not understand the codes for single and family coverage because the employee had the duty to monitor his own pay. If he did not understand the leave and earnings statement, he should have sought an explanation from competent authority. *See* DOHA Claims Case No. 00032801 (April 21, 2000). Finally, the employee admittedly had the benefit of the more expensive family coverage, and we do not find it inequitable that he should pay for the coverage he requested. *See* DOHA Claims Case No. 98120401 (March 4, 1999) and decisions cited therein.

## Conclusion

The employee's request for relief is denied, and we affirm the March 29, 2007, appeal decision. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board