

KEYWORDS: waiver of indebtedness-knowledge, health plan premiums

DIGEST: Waiver of the indebtedness that an employee incurs when the government fails to deduct for his Federal Employee Health Benefit Program premiums is not appropriate under 5 U.S.C. § 5584 if the employee is partially at fault for not verifying the correctness of his leave and earnings statements. Moreover, it is not inequitable to require repayment when the employee had the benefit of the insurance coverage during the periods when the government failed to collect the premiums.

CASENO: 07091703

DATE: 9/20/2007

DATE: September 20, 2007

In Re:)	
[REDACTED])	
Claimant)	Claims Case No.07091703
)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of the indebtedness that an employee incurs when the government fails to deduct for his Federal Employee Health Benefit Program premiums is not appropriate under 5 U.S.C. § 5584 if the employee is partially at fault for not verifying the correctness of his leave and earnings statements. Moreover, it is not inequitable to require repayment when the employee had the benefit of the insurance coverage during the periods when the government failed to collect the premiums.

DECISION

An Army employee at a state military department requests reconsideration of the September 5, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in

DOHA Claim No. 07082303. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) in which it concluded that the employee was indebted in the amount of \$10,679.03 for the overpayment of pay and allowances, and that for different reasons, the various components of that debt cannot be waived.

Background

There are three components in the total debt. First, the record shows on December 8, 1994, the employee initiated Standard Form 2809 (SF 2809) electing coverage by a certain insurance carrier participating under the Federal Employee Health Benefit Plan (FEHBP). The premiums became effective on January 8, 1995, and proper deductions were withheld from the employee's salary through August 11, 2001. On July 31, 2001, the employee completed a SF 2809 to add a dependent to his FEHBP coverage, with the change to become effective on August 12, 2001. However, due to administrative error, FEHBP premiums were not deducted from the employee's salary during the period August 12, 2001, through October 19, 2002, causing an overpayment of \$2,786.61.

The second part of the debt involves the employee premiums due on FEHBP coverage provided while the employee was not earning salary. On October 21, 2002, the employee was placed in a leave without pay (LWOP) status because he was called to active duty. The Notification of Personnel Action, Standard Form 50 (SF 50) that was issued to effect the employee's LWOP status stated that "[h]ealth benefits coverage continues for up to 365 days in a non-pay status unless you cancel your enrollment." DFAS advised this Office that the employee did not cancel his enrollment, and therefore, even though he did not have to worry about the agency portion of the premiums, he was still responsible for paying the employee premiums to DFAS while he was on active duty. The employee did not pay his premiums during that period and became indebted in the amount of \$2,042.06 for premiums during the period October 20, 2002, through July 26, 2003. The member agrees that this is the amount involved.

The third portion of the debt is similar to the first and involves employee FEHBP premiums uncollected from salary during a period of active Federal civilian service. The employee returned from active duty in July 2003. Effective July 27, 2003, premiums should have been deducted from the employee's salary, but due to administrative error, DFAS failed to deduct FEHBP premiums during the period July 27, 2003, through July 23, 2005, causing an overpayment of \$5,850.36.

The employee acknowledged that he and his dependents utilized his health insurance coverage and that he received benefit explanations, booklets and other correspondence from the insurance carrier.

In his request for reconsideration, the employee asserts that his problem began when he was placed on LWOP to serve on active military duty. As the Board construes the employee's argument, the state military department had agreed, as a part of its compensation package with the employee, to pay the employee for his portion of the FEHBP premiums while he was on

active duty. The employee also indicates that he has made payments on the entire debt, but can not verify the amount he repaid against the debt because of inaccuracies in his leave and earnings statements between June 2005 and September 2007. The employee states that he spoke or wrote to DFAS representatives several times but he has never received any documentation verifying the amount that he has repaid. He believes he has repaid approximately \$2,100.00.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

The first and third portions of the debt involve the government's failure to make deductions from the employee's salary to pay for his premiums due under the FEHBP. The employee points out accounting inaccuracies in his leave and earnings statements made by DFAS after the overpayments were identified. However, while we recognize that there may be some question on the dollar amounts that he has repaid, the employee offers no basis for waiving these two portions of the debt as against equity and good conscience and contrary to the best interests of the United States.

The government erred in not making the deductions, but government error, by itself, does not entitle the employee to a waiver. *See* DOHA Claims Case No. 02050613 (May 23, 2002); *see also* Department of Defense (DoD) Instruction 1340.23, ¶ E4.1.3 (February 14, 2006). DOHA's adjudicator found that at the inception of the first period of indebtedness the employee's net salary actually increased from the prior pay period when premiums had been deducted, and she concluded that this should have alerted the employee that he was being overpaid. The adjudicator also found that the employee had access to his leave and earnings statements throughout both periods, and she concluded that if he had reviewed them, as he was obliged to do, he would have known that FEHBP premiums were not being deducted from his salary. The adjudicator's findings are not challenged, and her conclusion that the employee is partially at fault because he should have known that he was overpaid, is supported by the record. Under such circumstances, waiver is inappropriate. *See* DOHA Claims Case No. 00111319 (July 19, 2001). Significantly, as noted by the adjudicator, the employee and his family received the benefit of the FEHBP coverage throughout the two periods; therefore, collection of the debt for the premiums is not against equity and good conscience. *See Id.*

DFAS and DOHA's adjudicator reasonably interpreted 5 U.S.C. § 5584 to preclude application of this statute in situations where the debt for FEHBP premiums accrued during the period when the employee was in a LWOP status to perform active military duty. During that time, the employee was not receiving civilian pay and allowances, and there was no overpayment of them because DFAS failed to deduct the premiums. The premiums are simply owed to DFAS. The employee should address any questions he has concerning the possibility of reimbursement of those premiums, for which he would otherwise be liable, to his employing agency.

Conclusion

The employee's request for relief is denied, and we affirm the September 5, 2007, appeal decision. In accordance with DoD 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: William S. Fields

William S. Fields
Member, Claims Appeals Board