

KEYWORDS: waiver of indebtedness; health insurance premiums

DIGEST: A waiver of the government's claim against an employee for the erroneous payment of salary is not appropriate when the recipient knows, or reasonably should know, that the payment is erroneous. When an employee has selected self and family coverage under the Federal Employees' Health Benefits Program, he has a duty to review and monitor his leave and earnings statements to ensure that the proper premium is deducted for that plan, rather than the premium for the noticeably less expensive self-only coverage.

CASENO: 07122805

DATE: 1/07/2008

DATE: January 7, 2008

In Re:)
 [REDACTED]) Claims Case No.07122805
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver of the government's claim against an employee for the erroneous payment of salary is not appropriate when the recipient knows, or reasonably should know, that the payment is erroneous. When an employee has selected self and family coverage under the Federal Employees' Health Benefits Program, he has a duty to review and monitor his leave and earnings statements to ensure that the proper premium is deducted for that plan, rather than the premium for the noticeably less expensive self-only coverage.

DECISION

An employee of the Department of Defense requests reconsideration of the November 28, 2007, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07091705. In that decision, DOHA affirmed the initial determination of the Defense Finance and Accounting Service not to waive overpayments of salary to the employee totaling \$7,501.13.

Background

The record shows that in December 2001, the employee initiated Standard Form 2809 (SF 2809) electing the Blue Cross Blue Shield Service Benefit Plan for the employee and his dependent spouse under the Federal Employees' Health Benefits (FEHB) Program. At that time, when completing the SF 2809, the employee erroneously listed enrollment code 104 (self) instead of enrollment code 105 (self and family). As a result, when coverage became effective on December 30, 2001, his FEHB premiums were deducted based on code 104 instead of 105. Since self-only premiums are less expensive than self and family premiums, insufficient health insurance premiums were deducted from the employee's salary from December 30, 2001, through June 24, 2006, causing an overpayment of \$7,501.13. The record indicates that the employee listed his spouse as a participating family member on the SF 2809; he admits that he always intended to have his spouse covered; and Blue Cross issued insurance cards for both of them.

On reconsideration, the employee takes issue with DOHA's adjudicator's conclusion that he should have known the difference between the 104 and 105 enrollment codes. He states that he did check his leave and earnings statement against the enrollment form at the outset of 2001 and found the codes in order. The member states that since he and his spouse were more than satisfied with their health plan, and did not wish to change any enrollment options, he had no further reason to check the enrollment codes.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary if repayment 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* Department of Defense Instruction 1340.23 (Instruction), ¶ E4.1.2 (February 14, 2006). Furthermore, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis by itself for granting waiver. Instruction, ¶ E4.1.3.

While there is no issue here of fraud, misrepresentation, or lack of good faith on the part of the employee, there is a reasonable basis to support the adjudicator's conclusion that the employee is partially at fault. Even if the employee had been confused by the enrollment codes, as the adjudicator pointed out, he still had a duty to continuously review his leave and earnings statements and make sure that the correct amount was deducted for the noticeably more

expensive self and family insurance coverage. *Cf.* DOHA Claims case No. 07052404 (June 5, 2007). The employee's reconsideration request does not address this significant aspect of the Appeal Decision.

There is a separate basis for affirming the Appeal Decision. As pointed out in DOHA Claims Case No. 02040401 (May 2, 2002), a decision cited in the Appeal Decision, it is not against equity and good conscience for the employee to pay for coverage and benefits which he elected. Furthermore, the employee and his family admittedly received the benefit of the more expensive family coverage, and it is not inequitable that he should pay for this received benefit. *See* DOHA Claims Case No. 07052404, *supra*, and DOHA Claims Case No. 98120401 (March 4, 1999) and the decisions cited therein.

Conclusion

The employee's request for reconsideration is denied, and we affirm the November 28, 2007, Appeal Decision. In accordance with the Instruction, ¶ 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