

KEYWORDS: waiver of indebtedness; FEHB; benefit of insurance coverage

DIGEST: 1. When an employee elects a more expensive health plan under the Federal Employee Health Benefits (FEHB) program, she has a duty to review and monitor her leave and earnings statements when the election becomes effective to ensure that the proper premium is deducted for that plan, rather than the premium for a noticeably less expensive prior plan. 2. Under 5 U.S.C. § 5584, when an employee is aware that she is receiving overpayments, she does not acquire title to the excess amounts and has a duty to hold the money for eventual repayment. In such circumstances, waiver is not appropriate. 3. It is not inequitable to require repayment when the employee had the benefit of insurance coverage during periods when the government failed to collect the proper premiums.

CASENO: 09061102

DATE: 6/16/2009

DATE: June 16, 2009

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 09061102

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

1. When an employee elects a more expensive health plan under the Federal Employee Health Benefits (FEHB) program, she has a duty to review and monitor her leave and earnings statements when the election becomes effective to ensure that the proper premium is deducted for that plan, rather than the premium for a noticeably less expensive prior plan.

2. Under 5 U.S.C. § 5584, when an employee is aware that she is receiving

overpayments, she does not acquire title to the excess amounts and has a duty to hold the money for eventual repayment. In such circumstances, waiver is not appropriate.

3. It is not inequitable to require repayment when the employee had the benefit of insurance coverage during periods when the government failed to collect the proper premiums.

DECISION

An employee of the United States Army requests reconsideration of the June 3, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09040302. In that decision, DOHA affirmed an initial determination by the Defense Finance and Accounting Service (DFAS) to deny the employee's request under 5 U.S.C. § 5584 that the government waive collection of \$262.65 in erroneous overpayments of salary caused by DFAS's failure to deduct the proper amount of premiums for the plan chosen by the employee under the Federal Employee Health Benefits (FEHB) program.

Background

The record indicates that in December 2007, the employee elected to change her FEHB plan to the Blue Cross Blue Shield Service Benefit Plan, with coverage becoming effective on January 6, 2008. The employee should have expected an increase in premiums starting with the first pay period in 2008 as a result of her FEHB election, but due to administrative error, the increased premiums were not deducted from the employee's salary during the period January 6, 2008, through March 15, 2008, causing an overpayment of \$262.65.

On reconsideration, the employee again notes that the error was due to the lack of quality controls by the government. She distinguishes her situation from that of other waiver applicants who did not report discrepancies in their favor as she did.

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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the Government is not a sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction ¶ E4.1.4.

In this case, the adjudicator found that the employee did not report the discrepancy in FEHB premiums until March 2008, but she should have been aware of it in January 2008 when

she received her leave and earnings statement (LES) for the pay period ending (PPE) January 19, 2008.¹ This finding is uncontested. Where an employee elects a more expensive FEHB plan, she has a duty to review her LES to ensure that the proper premium is deducted for that plan, rather than the premium for the noticeably less expensive previous plan. *See, e.g.*, DOHA Claims Case No. 07122805 (January 7, 2008). However, even if the employee had immediately reported the discrepancy in January 2008, waiver relief would have been inappropriate. In situations, unlike here, where an employee does act promptly in notifying the appropriate officials and continues to try to resolve the matter, she does not acquire title to the amounts paid to her because she knows she is being overpaid. In such circumstances, the employee has a duty to hold the overpayments for subsequent repayment. *See, e.g.*, DOHA Claims Case No. 07051506 (May 22, 2007); DOHA Claims Case No. 07072501 (July 31, 2007); and DOHA Claims Case No. 97090809 (September 23, 1997).

Additionally, waiver is not appropriate where the employee has the benefit of the FEHB coverage that she elected during the period of overpayment, and in such circumstances, it is not inequitable for an employee to pay for that coverage. *See* DOHA Claims Case No. 07091703 (September 20, 2007).

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 3, 2009, 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: William S. Fields

William S. Fields
Member, Claims Appeals Board

¹The LES actually showed a decrease in FEHB premiums from \$40.89 (PPE January 5, 2008) to \$39.13 per pay period (PPE January 19, 2008), rather than an increase to \$91.66 per pay period.