

KEYWORDS: waiver of indebtedness; FEHB

DIGEST: Waiver of the indebtedness that an employee incurs when the government fails to deduct Federal Employee Health Benefit Program premiums from his salary 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 period when the government failed to collect the premiums.

CASENO: 09073001

DATE: 8/4/2009

DATE: August 4, 2009

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In Re:))
[REDACTED])	Claims Case No. 09073001
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Claimant))
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of the indebtedness that an employee incurs when the government fails to deduct Federal Employee Health Benefit Program premiums from his salary 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 period when the government failed to collect the premiums.

DECISION

This is a request for reconsideration of the May 29, 2009, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09030903. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) to deny waiver of the employee's debt in the amount of \$5,737.64, for the overpayment of funds that should have been deducted from his salary for Federal Employee Health Benefit (FEHB) coverage.

Background

The record shows the employee elected FEHB coverage in August 2006, and the coverage became effective September 17, 2006. However, due to an administrative error, no health insurance premiums were deducted from the employee's salary from September 17, 2006, through April 26, 2008, causing an overpayment of \$5,737.64. The employee notes that it was not until he was notified that his FEHB benefits were in jeopardy that he realized he was receiving overpayments. He reiterates in his reconsideration request that while he was receiving his leave and earnings statement, he believed the deduction for OASDI (Old Age, Survivors, and Disability Insurance) was in fact the deduction for the health benefits. He states that he was not aware this was for social security; he had always thought that was the Federal Insurance Contributions Act (FICA) tax. He states that the amount deducted for OASDI appeared to be the correct amount that should be deducted for health benefits. He disputes that he should have noticed an increase in his pay, as he states that he was working overtime during the initial period and would not have noticed it. The employee states that he could not have initially checked his leave and earnings statement as he did not have a PIN to check online, and his hard copy statements were being mailed to an address that was not his place of residence. The employee reiterates that the error was an administrative one and was the responsibility of his servicing personnel office, and not his own. At this time, since he has been paying on the debt for the last 13 months, he requests that amount be considered a settlement and the balance be waived.

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 government erred in not making the deductions; but administrative 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). The adjudicator found that the employee's salary increased when the deduction should have first started. Except for a few pay periods, the employee did not dispute having access to leave and earnings statements over the 17-month-period the deductions were not being made. The adjudicator's conclusion that the employee was partially at fault because he should have known

that he was being overpaid is supported by the record. Under such circumstances, waiver is inappropriate. *See* DOHA Claims Case No. 07091703 (September 20, 2007). Moreover, the employee and his family received the benefit of the FEHB coverage during the period in question. *Id.*

Conclusion

The employee's request for reconsideration is denied, and we affirm the May 29, 2009, Appeal Decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Acting Chairman, Claims Appeals Board

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Catherine M. Engstrom
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