March 4, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 98120401

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee was transferred from Japan to the United States, health insurance premiums erroneously ceased to be deducted from his pay. The employee should have reviewed his leave and earnings statements in sufficient detail to detect the error and should have called the error to the attention of the appropriate authorities. Since the member is thus at least partially at fault in the accrual of the debt, waiver under 5 U.S.C. § 5584 is precluded.

DECISION

This is in response to an appeal of DOHA Settlement Certificate, DOHA Claim No. 98092808, November 16, 1998, which denied the request of an employee for waiver of a debt which arose when health insurance premiums erroneously ceased to be deducted from his pay.

Background

The employee was transferred from Yokota Air Base, Japan, to the Youngstown Air Reserve Station, Ohio, in November 1997. Although the employee had previously elected health insurance coverage, the Defense Finance and Accounting Service (DFAS) erroneously ceased deducting premiums at the time of his transfer, resulting in an overpayment of $789.56 between November 9, 1997, and April 25, 1998.

The employee contends that he meets the standards for waiver as set out by the Comptroller General because the debt was caused by the government's error. He states that he was unaware that the insurance deductions had ceased. He notes that there were many changes in his pay due to his transfer back to the United States and that his pay had fluctuated while he was in Japan because part of his pay was based on the value of the yen. He calls our attention to the fact that he was experiencing problems with his pay because DFAS had halted deductions for the deposit he was making into the Civil Service Retirement System (CSRS). He points out that repayment would be a hardship to his family.

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 and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The standard we use to determine fault is whether a reasonable person would have known or should have known that he was receiving payments in excess of his entitlements. *See Standards for Waiver,* 4 C.F.R. § 91.5(b) (1996). Our decisions and those of the Comptroller General indicate that waiver is not appropriate when an employee has records which indicate an overpayment and fails to review such documents for accuracy or otherwise fails to take corrective action. *See* DOHA Claims Case No. 98112018 (January 11, 1999), and *Sheldon H. Avenius, Jr.,* B-226465, Mar. 23, 1988. The employee does not acquire title to the excess payment merely because an administrative error occurred, and he has a duty to return the excess amount when asked to do so. *See Master Sergeant Haywood A. Helms, USAF,* B-190565, Mar. 22, 1978.

Our decisions and those of the Comptroller General stress the importance of an employee's monitoring of his leave and earnings statements (LES) and other finance and personnel documents. If the employee does not monitor those documents, he is considered to be at least partially at fault for payroll errors which could have been halted by his diligence, and waiver of the resulting debt is not appropriate. *See* DOHA Claims Case No. 98112018, *supra;* and *Roosevelt W. Royals,* B-188822, June 1, 1977.(1) In the case before us, the record indicates that the employee was in fact monitoring his LES, since he was aware that DFAS had twice ceased deducting from his pay the CSRS deposits he was making. In our view, a reasonable person should also have noticed that insurance premiums were not being deducted. He is therefore considered to be at least partially at fault in the accrual of the debt, and waiver is precluded.

While the employee points out that his transfer from Japan to the United States caused numerous changes in his pay, it is our view that such changes would have caused a reasonable person to review each element on his LES especially carefully at the time of his transfer. *See* DOHA Claims Case No. 98112018, *supra.* Although we understand that the employee's pay had fluctuated in Japan, pay fluctuations do not relieve the employee of his responsibility to review his LES or provide a basis for waiver. *See Donald R. Kremer,* B-231924, Oct. 24, 1989; and *L. Mitchell Dick,* B-192283, Nov. 15, 1978. Upon transfer an employee's health insurance coverage normally continues in the absence of administrative action to modify or cancel it, and there is no indication in the record that the employee's health insurance was terminated. Since the employee thus had the benefit of health insurance coverage during the period in question, we do not find it inequitable that he should pay for that coverage. *See Anna M. Leal-Guzman,* B-243885, Aug. 27, 1991; and *Ann D. Bolton,* B-242854, June 5, 1991. The fact that repayment will result in hardship does not provide a basis for waiver. *See Petty Officer First Class Patrick K. Reedy, USN (Retired),* B-257862, Jan. 17, 1995.

Conclusion

We affirm the Settlement Certificate.

_/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. In *Arthur Weiner,* B-184480, May 20, 1976, the Comptroller General said, "(W)e cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. This is an essential function in the government's attempts to reduce payroll errors." This statement was repeated in *Royals* and other Comptroller General decisions.