

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York, NY, Employer**

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**Docket No. 08-1893  
Issued: January 12, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 26, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 20, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly paid appellant compensation for wage loss commencing November 26, 1997.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>1</sup> The Board affirmed a December 12, 2007 decision denying merit review of a December 6, 2006 Office decision regarding suspension of compensation and an overpayment of compensation. A history of the case was provided in the Board's prior decision and is incorporated herein by reference.

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<sup>1</sup> Docket No. 08-1074 (issued December 15, 2008).

With respect to wage-loss compensation, in an October 19, 2005 memorandum, the Office discussed issues raised by appellant. It stated that, for the 64 hours of compensation claimed from December 21 to 24, 1998 and February 16 to 19, 1999, appellant was not entitled to compensation because she had taken paid leave on those dates. Regarding the deduction of health insurance premiums, the Office acknowledged that errors had occurred. Appellant had selected single coverage, enrollment code P41, but for the periods November 26 to December 31, 1997 and March 30, 1998 to July 16, 1999, it had deducted a higher amount for enrollment code, P42. She was advised she would receive direct payments for the amount erroneously deducted. The Office noted that appellant made an enrollment change and that as of January 1, 2003 deductions were made based on enrollment code 801. It was also noted that for certain periods no health insurance premium deductions were made and the issue of an overpayment of compensation would be developed. In addition, the Office noted that appellant was not entitled to augmented compensation as she reported her granddaughters as dependents.

Appellant requested that the Office issue a formal decision on the compensation issues discussed in the October 19, 2005 memorandum. By decision dated August 16, 2007, the Office found that appellant was not entitled to any additional compensation based on insurance deductions since November 26, 1997. Appellant requested an oral hearing, which was held on January 7, 2008. In a decision dated March 20, 2008, the hearing representative affirmed the August 16, 2007 decision.

### **LEGAL PRECEDENT**

The regulations of the Office of Personnel Management (OPM), which administer the Federal Employee Health Benefits (FEHB) Program, provide guidelines for the registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(b)(1) provides: “An employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due to the United States in the amount of the proper employee withholding required for that pay period.”

### **ANALYSIS**

On appeal, appellant primarily discusses two issues: (1) the deductions of health benefit insurance (HBI) premiums, and (2) wage-loss compensation claimed from December 21 to 24, 1998 and February 16 to 19, 1999. Addressing the first issue, the Board notes that for periods the Office did not deduct HBI premiums, such as from January 1 to March 27, 1998, or October 20, 2001 to December 31, 2002, these periods were developed as an overpayment of compensation and were not addressed by the decisions on appeal. As to the periods November 26 to December 31, 1997 and March 30, 1998 to July 16, 1999, the Office deducted HBI premiums based on enrollment code P42 (family coverage). The health benefits enrollment form (SF 2809) indicated that appellant was enrolled in P41 (single coverage) as of January 4, 1997. Therefore appellant was originally underpaid for these periods as excessive HBI deductions were made.

The Office, however, acknowledged the error in its October 19, 2005 memorandum. A payment of \$197.18 was made for the period November 26 to December 31, 1997, and a payment of \$1,279.10 was issued for the period March 30, 1998 to July 16, 1999. These payments were made to reimburse appellant for the excessive deductions in the original compensation payments. As of January 1, 2003, the Office deducted HBI premiums based on enrollment code 801, in accord with the SF 2809 filed by appellant on December 13, 2002. There is no probative evidence of record that appellant was entitled to additional compensation based on the erroneous deduction of HBI premiums.

As to the claim for compensation for 64 hours from December 21 to 24, 1998 and February 16 to 19, 1999, the Office made only a brief finding that appellant had used paid leave for those periods. A CA-7a (time analysis form) dated October 25, 2001 initially showed appellant used paid leave. Even if appellant used paid leave, she is not precluded from claiming compensation for wage loss.<sup>2</sup> The Office must adjudicate the claim for compensation and make a determination as to whether an employment-related disability for the claimed period is established.<sup>3</sup> Moreover, a September 30, 2002 CA-7a showed that appellant used leave without pay for the relevant periods. On remand the Office should make a proper determination as to compensation for wage loss from December 21 to 24, 1998 and February 16 to 19, 1999.

The Board will address two remaining issues raised by appellant. As to augmented compensation, the evidence of record indicated that appellant reported her granddaughters as dependents. Under 5 U.S.C. § 8110, a granddaughter is not included as a dependent and therefore there is no evidence that appellant was entitled to augmented compensation under that section. On appeal appellant generally asserted that life insurance deductions were incorrect, without providing any evidence or argument as to why she felt the deductions were incorrect. In the absence of probative evidence, the Board finds no error regarding life insurance deductions.

### **CONCLUSION**

There is no evidence that appellant is entitled to additional compensation based on an incorrect deduction for HBI premiums. The case will be remanded for a proper decision regarding entitlement to compensation for wage loss from December 21 to 24, 1998 and February 16 to 19, 1999.

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<sup>2</sup> 20 C.F.R. § 10.425 (1999) provides an employee may claim compensation for periods of annual and sick leave that are restorable by the employing establishment.

<sup>3</sup> See *Glen M. Lusco*, 55 ECAB 148 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 20, 2008 and August 16, 2007 are affirmed with respect to additional compensation based on incorrect insurance deductions. With respect to compensation from December 21 to 24, 1998 and February 16 to 19, 1999, the decisions are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 12, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board