

¹ 5 U.S.C. § 8101 *et seq.*

and back. Appellant intermittently stopped work for recurrences of disability. She stopped work and was placed on the periodic rolls as of January 3, 2011. Health insurance premiums were not deducted from her FECA benefits.

In a March 19, 2012 letter, the employing establishment informed OWCP that a clerical error was made on December 21, 2010 when processing appellant's CA-7 claim form: the "Health Benefits under the FEHBP" box should have been checked and the Health Benefits Code "L42" should have been entered.

An OWCP letter dated March 28, 2012 noted that appellant's health benefit premiums had not been deducted as required beginning January 3, 2011.

On April 26, 2012 OWCP completed a form stating that health benefits for appellant were undersubscribed in the amount of \$8,632.11 for the period January 3, 2011 to March 10, 2012 because her premiums were not deducted from her periodic rolls compensation pursuant to code L42.

OWCP issued a preliminary determination on April 26, 2012 finding that an overpayment of compensation had occurred in the amount of \$8,632.11 for the period January 3, 2011 to March 10, 2012. It noted that the overpayment arose because the health benefit premiums were not deducted from her compensation payments during the period. OWCP advised her that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention or request a precoupment hearing. It found that appellant was without fault in the creation of the overpayment and requested that she complete the enclosed overpayment questionnaire (OWCP-20). Appellant was informed that failure to submit the requested information would result in denial of waiver of the overpayment. She did not respond to this letter.

A memorandum of record dated May 2, 2012 summarized a telephone call from appellant to OWCP. Appellant noted that she wanted to make a retroactive open season change regarding health insurance carriers. She also stated that she should not have to pay for past, present or future health insurance coverage. During the conversation appellant confirmed that she had utilized her health insurance coverage during the years 2011 and 2012.

By decision dated June 13, 2012, OWCP finalized the overpayment of \$8,632.11. It also determined that she was not at fault in the matter, but was not entitled to waiver of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

The regulations of the Office of Personnel Management (OPM), which administers the Federal Employees' Health Benefits program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due to

the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.”²

5 C.F.R. § 890.502(c) provides:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected contributions and applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees’ Health Benefits Fund.”³

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁴ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁵ The Board has recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$8,632.11 for the period January 3, 2011 through March 10, 2012. The overpayment occurred because health benefit premium deductions were not made from appellant’s compensation during this period. OWCP was notified of this underwithholding by OPM. It determined the amount of overpayment by calculating the amount of health premiums that should have had deducted from appellant’s compensation checks during this period under code L42 in the amount of \$8,632.11.

The record establishes that \$8,632.11 in premiums for health benefits were not deducted from appellant’s compensation for the period January 3, 2011 through March 10, 2012. An overpayment was created by the underdeduction of premiums for health benefits. Appellant consequently received an overpayment of compensation due to OWCP’s failure to deduct premiums for health insurance coverage under the code L42.⁷ She has called the overpayment into question by contending that she should be allowed to make a retroactive change in health insurance carriers, outside the open season time period. The Board lacks jurisdiction to determine appellant’s rights to retroactively select health insurance carriers. The premiums

² 5 C.F.R. § 890.502(a)(1).

³ *Id.* at § 890.502(c).

⁴ *Supra* note 2.

⁵ *Supra* note 3.

⁶ See *James Lloyd Otte*, 48 ECAB 334 (1997); *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

⁷ See *supra* notes 4 through 6 and accompanying text.

found underwithheld by OPM must be paid in order to maintain her health insurance. There is no evidence she elected to end her enrollment. Therefore, OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,632.11 for the period January 3, 2011 through March 10, 2012.

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁸ An individual should always be found without fault where the overpayment resulted from OWCP's error in the underdeduction of health benefits or life insurance premiums.⁹

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹⁰

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹¹

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that she was without fault does not preclude OWCP from recovering all or part of the overpayment.¹² Appellant did not submit a response to OWCP's November 13, 2011 preliminary determination and did not submit a completed Form OWCP-20, as requested. OWCP did not abuse its discretion in refusing her request for waiver. It was precluded from evaluating waiver of the overpayment.¹³

⁸ 20 C.F.R. § 10.433(a).

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b) (June 2009).

¹⁰ 20 C.F.R. § 10.434. *See* 5 U.S.C. § 8129(b).

¹¹ *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

¹² *See George A. Rodriguez*, 57 ECAB 224 (2005).

¹³ 20 C.F.R. § 10.438(b). Failure to submit the requested information within 30 days of the request shall result in denial of the waiver and no further request for waiver shall be considered until the requested information is furnished.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,632.11 for the period January 3, 2011 through March 10, 2012. The Board finds that the overpayment occurred because OWCP neglected to deduct the health insurance premiums from appellant's continuing compensation. The Board further finds that OWCP properly denied waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board