

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant does not challenge fact or amount of overpayment but instead contends that she was without fault in creating the overpayment.

FACTUAL HISTORY

On October 23, 2001 appellant, then a 33-year-old physician, sustained injuries to her right upper back, shoulder, low back, neck and eyes when she was assaulted by a patient. She stopped work on October 23, 2001. OWCP accepted the claim for cervical and thoracic strains, chemical irritation of the eyes from pepper spray and post-traumatic stress disorder. Appellant returned to part-time modified employment on November 16, 2001 and to her full-time employment on December 13, 2001. She worked part-time limited-duty from February 8, 2002 until May 24, 2002, when she was separated from employment.

On November 19, 2002 OWCP paid appellant compensation for total disability beginning May 24, 2002. It did not deduct health insurance premiums from her compensation.

On October 15, 2003 the employing establishment completed a notice of change in health benefits enrollment form transferring appellant's health benefits effective June 1, 2002 to OWCP. The form indicated that she was transferring into the Federal Employees' Health Benefits program (FEHB) effective June 1, 2002 with enrollment code number A72. On October 5, 2003 OWCP began deducting health insurance premiums from appellant's compensation payments.

On October 22, 2013 OWCP noted that appellant transferred her health benefits effective June 1, 2002 but deductions did not begin until October 5, 2003.² In a worksheet dated October 22, 2013, it calculated the overpayment due to the nondeduction of premiums as \$2,997.16 using health benefits code A72.

On October 24, 2013 OWCP advised appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$2,997.16 because it did not deduct premiums for health benefits from her compensation from June 1, 2002 through October 4, 2003. It further notified her of its preliminary determination that she was at fault in creating the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a precoupment hearing.

In an October 31, 2013 overpayment recovery questionnaire, appellant disputed that she received an overpayment and asserted that she was without fault in its creation. She requested a decision based on the written evidence and submitted supporting financial information. In an accompanying statement, appellant related that she did not have premiums reduced from June 1, 2002 through October 4, 2003 because she was not enrolled in FEHB but instead was covered under private insurance. She noted that it appeared from the October 15, 2003 FEHB

² By decision dated January 13, 2006, OWCP reduced appellant's compensation based on its finding that her actual earnings effective July 20, 2005 as a part-time medical records reviewer consultant fairly and reasonably represented her wage-earning capacity.

form that benefits were retroactive to June 1, 2002 but stated that she was “not concerned about it at the time, assuming it was just to match the start date of OWCP benefits.” Appellant related that she did not know that she needed to make any payment and was without fault in creating any overpayment.

By decision dated January 7, 2014, OWCP found that appellant received an overpayment of compensation in the amount of \$2,997.16 from June 1, 2002 through October 4, 2003 as it failed to deduct premiums for health benefits. It further determined that she was at fault in the creation of the overpayment because she should have known that she had health insurance premiums that were not deducted during this time. OWCP advised that appellant should pay the owed amount within 30 days or be barred for life from obtaining coverage through FEHB.

On appeal, appellant asserts that she does not challenge the fact or amount of the overpayment but instead the finding that she was at fault. She maintains that there was no way to know that she had to pay premiums for periods in which she was not covered. Appellant requests waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

An employee entitled to disability compensation may continue his or her health benefits under the FEHB program. The regulation of the Office of Personnel Management (OPM), which administers the FEHB program, provides 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 to the United States in the amount of the proper employee withholding required for that pay period.”³

In addition, 5 C.F.R. § 890.502(c)(1) provides:

“An agency that withholds less than or none of the proper health benefits contributions for an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of the Title, 5 United States Code, to OPM for deposit in the Employees’ Health Benefits Fund.”⁴

³ 5 C.F.R. § 890.502(b)(1).

⁴ *Id.* at § 890.502(d).

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.⁵ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,997.16 from June 1, 2002 through October 4, 2003. Appellant was covered under FEHB effective June 1, 2002 but OWCP did not make deductions from her FECA benefits for her enrollment in FEHB code A72 until October 5, 2003. OWCP calculated that the premiums owed for health insurance code A72 during this period was \$2,997.16. When an underwithholding of these premiums is discovered, the entire amount is deemed an overpayment in compensation because OWCP must pay the full amount of the premium to OPM when the error is discovered.⁸ The Board finds, therefore, that OWCP should have reduced health benefit premiums as appellant had selected enrollment and premiums were not deducted. This omission created an overpayment in compensation of \$2,997.16. Appellant has not challenged fact or amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

A waiver of recovery is not possible if the claimant is at fault in the creation of the overpayment.⁹ A claimant who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect. Whether or not an individual was at fault depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment. According to OWCP procedures, a claimant should be found

⁵ *Id.* at § 890.502(b)(1).

⁶ *Id.* at § 890.502(d).

⁷ *James Lloyd Otte*, 48 ECAB 334 (1997).

⁸ *Id.*; *see also Keith H. Mapes*, 56 ECAB 130 (2004).

⁹ *See Donald L. Overstreet*, 54 ECAB 678 (2003); *Gregg B. Manston*, 45 ECAB 344 (1994).

¹⁰ 20 C.F.R. § 10.43; *see also Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

without fault if the overpayment results from the underwithholding of health or life insurance premiums, unless the claimant had actual knowledge of the calculation error.¹¹ There is no evidence that appellant had actual knowledge that she was receiving an overpayment for the period June 1, 2002 through October 4, 2003. The case will be remanded so that OWCP can consider whether she is entitled to waiver of recovery of the overpayment.¹²

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,997.16 for the period June 1, 2002 through October 4, 2003 because OWCP did not deduct premiums for health benefits. The Board further finds that she was not at fault in creating the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 9, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

¹¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009).

¹² See *P.H.*, Docket No. 13-642 (issued August 12, 2013); *J.L.*, Docket No. 13-132 (issued June 6, 2013).