

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

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R.S., Appellant )

and )

DEPARTMENT OF THE TREASURY, )  
INTERNAL REVENUE SERVICE, )  
Chamblee, GA, Employer )

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**Docket No. 07-1252**  
**Issued: December 17, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 5, 2007 appellant filed a timely appeal of the March 19, 2007 decision of the Office of Workers' Compensation Programs, which found that she received an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues on appeal are: (1) whether the Office properly determined that appellant received an overpayment of \$1,889.57 from April 12, 2004 to May 13, 2006; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$60.00 from continuing compensation payments.

**FACTUAL HISTORY**

On February 17, 2004 appellant, then a 58-year-old seasonal tax examiner, filed a claim alleging that on February 10, 2004 she injured her back when she fell out of her chair while in

the performance of duty. The Office accepted that she sustained a cervical strain, cervical radiculopathy, lumbar strain and lumbar radiculopathy. Appellant stopped work on February 18, 2004 and did not return.<sup>1</sup>

A daily roll payment sheet and a daily computation log dated May 24, 2004 noted that appellant's annual salary was \$23,863.00 effective February 18, 2004. The documents indicated that there were no health benefits codes and no health benefits withholding dates.

In a letter dated June 8, 2004, the Office set forth the conditions by which appellant would be paid compensation benefits. The Office noted that for the period May 16 to June 12, 2004 appellant would be paid net compensation of \$1,506.08. The Office noted that no health benefits, basic or optional life insurance would be deducted from the payments. The Office advised appellant to contact the Office if she had health benefits, basic or optional life insurance coverage.

In a letter dated December 21, 2004, the Office requested that the employing establishment provide documentation confirming appellant's enrollment in a health benefits plan and advise how the deductions were paid since February 10, 2004.

On September 15, 2005 the employing establishment submitted a health benefits election form dated February 3, 2003, which noted that appellant elected Kaiser Permanente health insurance.

In a statement dated May 10, 2006, appellant advised that on four occasions she was threatened with termination of her health care benefits and requested clarification of her health benefits status.

In a memorandum dated May 25, 2006, the Office advised that appellant was entitled to health benefits (code F81) for the period April 12, 2004 to May 13, 2006; however, health benefit deductions were never made from her compensation benefits. The Office noted that the agency terminated appellant's health benefits in error and a reinstatement was processed by the insurance carrier; but health benefit deductions from her compensation were never initiated by the employer.

In a memorandum to the file dated June 1, 2006, the Office claims examiner noted that there was overpayment of compensation in appellant's case as health benefits insurance was not deducted from her compensation for the period February 12, 2004 to May 13, 2006.

In a periodic disability worksheet dated June 6, 2006, the Office noted that health benefits were deducted from appellant's compensation benefits, as of June 11, 2006, in the amount of \$77.18 per pay period. In correspondence dated June 7, 2006, the Office responded to a congressional inquiry and advised that appellant was entitled to health benefits. The Office indicated that the employing establishment terminated appellant's health benefits in error; however, the Office retroactively reinstated benefits effective April 12, 2004. In a memorandum

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<sup>1</sup> The record reflects that appellant was employed as a full-time seasonal tax examiner who worked from January to May and was in furlough status the rest of the year.

dated June 26, 2006, the Office provided compensation payment information for appellant noting that she was a full-time seasonal employee who was employed for over one year. The Office noted that appellant's pay rate effective February 18, 2004 was \$509.11 per week and that a health benefit arrearage would be calculated on June 26, 2006.

In a supplemental roll payment worksheet dated June 26, 2006, the Office noted that, from April 12, 2004 to June 10, 2006, appellant's weekly pay rate was \$517.34 and the compensation rate was three-quarters. The worksheet noted that during this period there were no deductions for health insurance or basic and optional life insurance. The Office calculated that health benefits (code F81) premiums for the period April 12, 2004 to May 13, 2006 were \$1,889.57. In a manual adjustment form dated June 26, 2006, the Office noted that there was an overpayment of compensation as health benefits were not deducted for the period April 12, 2004 to May 13, 2006. The Office noted that the health benefit deductions began on May 14, 2006. The form noted that for the period April 12, 2004 to May 13, 2006 appellant's cost for health benefits was \$1,889.57. In a periodic disability worksheet dated June 27, 2006, the Office noted that from June 11 to July 8, 2006, appellant's weekly pay rate was \$509.11, the compensation rate was three-quarters and health benefits were deducted from appellant's compensation in the amount of \$77.18.

In a preliminary overpayment determination dated July 24, 2006, the Office advised appellant that she had received a \$1,889.57 overpayment because health insurance premiums were not deducted for the period April 12, 2004 to May 13, 2006. The Office made a preliminary finding that appellant was without fault in creating the overpayment. The Office informed appellant that, if she believed she should receive a waiver of the overpayment, she should complete a financial recovery questionnaire form and submit documents such as income tax returns, bank statements, bills, canceled checks, pay slips and other records to support her claimed income and expenses.

On August 15, 2006 appellant advised that she was the victim of errors and oversights on the part of the Office with regard to the repeated cancellation of her health insurance. She indicated that the claims examiner in her case assured her that the health insurance cancellation was a mistake which would be corrected immediately but appellant would be responsible for the overpayment. Appellant requested that the payments be spread out over several months due to her severe physical and financial problems. She indicated that she was billed \$128.52 which she was informed would be applied to a partial payment to the outstanding balance of the premiums owed; however, this amount was not deducted from the preliminary overpayment determination. Appellant advised that the preliminary overpayment determination stated that she was overpaid \$1,889.57 in benefits because health benefit premiums were not deducted from her temporary total disability compensation for the period April 12, 2004 to May 13, 2006 and that she was without fault in this matter. She stated: "since I agree totally with these findings, there is no need for me to present new evidence or to request a hearing or waiver." Appellant indicated that she could not explain the repeated mistakes in her claim but complied with every request and was forthright in providing all the information that the Office requested.

By decision dated March 19, 2007, the Office found that appellant received an overpayment of compensation in the amount of \$1,889.57 that occurred because health benefit premiums were not deducted from April 12, 2004 to May 13, 2006. The Office found that she

was without fault in the creation of the overpayment, but that waiver of recovery of the overpayment was not warranted. The Office specifically noted that appellant's correspondence dated August 15, 2006 noted that she agreed with the preliminary overpayment determination and that she would not submit new evidence or to request a hearing or a waiver of the overpayment. Appellant did not submit the overpayment questionnaire or any further evidence. The Office found that the sum of \$60.00 would be withheld from her continuing compensation effective April 15, 2007.

### **LEGAL PRECEDENT -- ISSUE 1**

The regulations of the Office of Personnel Management (OPM), which administers the Federal Employees' Health Benefits (FEHB) 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 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.”<sup>2</sup>

In addition, 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 any applicable agency contributions required under section 8906 of title 5 United States Code, to OPM for deposit in the Employees Health Benefits Fund.”<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

In this case, deductions for health insurance premiums were not taken from appellant's compensation payments for the period April 12, 2004 to May 13, 2006. The Office calculated that health benefits of \$1,889.57 should have been deducted from appellant's compensation during the above period. The Office noted that the employing establishment terminated appellant's health benefits in error but retroactively reinstated the benefits effective April 12, 2004. As no health benefit deductions were made from her compensation during that time period and there is no evidence that appellant cancelled her health benefits enrollment, the Board finds that an overpayment was created in the amount of \$1,889.57 due to the under withholding of health insurance premiums. Appellant does not dispute that she received the overpayment in question nor does she dispute the amount of the overpayment. Rather, in correspondence dated August 15, 2006, she noted that she agreed with the preliminary

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<sup>2</sup> See 5 C.F.R. § 890.502(a)(1). See *John Skarbek*, 53 ECAB 630 (2002).

<sup>3</sup> See 5 C.F.R. § 890.502(c).

overpayment determination and would not submit new evidence or request a hearing or a waiver of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of the Act provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience.”<sup>4</sup>

Office regulations, at 20 C.F.R. § 10.438, state:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”<sup>5</sup>

### **ANALYSIS -- ISSUE 2**

In response to the Office’s preliminary finding of an overpayment of compensation on July 24, 2006, appellant did not submit any of the requested information on income, expenses and assets within 30 days or at any time prior to the Office’s issuance of its March 19, 2007 decision denying waiver of the overpayment. She thus, failed to submit sufficient evidence, as requested by the Office in its July 24, 2006 letter, showing that recovery would defeat the purpose of the Act or would be against equity and good conscience. Accordingly, the Office properly denied waiver of the overpayment pursuant to 20 C.F.R. § 10.438(b) of its regulations.

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<sup>4</sup> 5 U.S.C. § 8129.

<sup>5</sup> 20 C.F.R. § 10.438.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.<sup>6</sup> Section 10.441(a) of the regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>7</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, appellant did not submit an overpayment recovery questionnaire or other financial information as the Office requested prior to the March 19, 2007 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.<sup>8</sup> When, as in this case, an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>9</sup> The Board finds that the Office did not abuse its discretion in following those guidelines in this case, where appellant has not submitted financial information and deducting \$60.00 every 28 days.

### **CONCLUSION**

The Board finds that appellant received an overpayment of \$1,889.57 in compensation from April 12, 2004 to May 13, 2006. The Board also finds that the Office did not abuse its discretion in denying waiver of the overpayment. The Board further finds that the Office properly determined to recover the overpayment from continuing compensation payments.

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<sup>6</sup> *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>7</sup> 20 C.F.R. § 10.441(a).

<sup>8</sup> 20 C.F.R. § 10.438.

<sup>9</sup> *Ralph P. Beachum, Sr.*, 55 ECAB 442, 448 (2004); *Gail M. Roe*, 47 ECAB 268 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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