

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

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**MICHELLE A. CAMPBELL, Appellant** )

**and** )

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Miami, FL,  
Employer** )

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**Docket No. 04-2090  
Issued: February 17, 2005**

*Appearances:*  
*Michelle A. Campbell, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On August 23, 2004 appellant filed a timely appeal of a June 14, 2004 decision of the Office of Workers' Compensation Programs, finding that an overpayment of \$5,889.33 was created and that appellant was not entitled to waiver of the overpayment. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issues in this case.

**ISSUES**

The issues are: (1) whether the Office properly found that an overpayment of \$5,889.33 was created during the period September 24, 1999 to November 29, 2003 because health benefit insurance premiums were not deducted; and (2) whether the Office properly denied waiver of the overpayment.

**FACTUAL HISTORY**

The Office accepted that appellant sustained a cervical strain in the performance of duty on May 24, 1999. Appellant stopped working on the date of injury and began receiving compensation for temporary total disability. She was paid compensation through April 4, 2003,

but her compensation payments made no deduction for health benefit insurance. The Office suspended appellant's compensation for failure to attend a medical examination on March 16, 2000, the compensation was reinstated retroactively and appellant continued to receive compensation payments with no deduction for health benefit insurance premiums.

With respect to health benefits, the record indicated that, as of January 3, 1998, appellant was enrolled in Federal Employees Health Benefits (FEHB) under enrollment code FR2 and, as of January 1, 2000, the enrollment code was changed to 5E2. On June 15, 2001 a standard Form 2810 indicated that appellant's enrollment was terminated due to 365 days in a nonpay status. An enrollment form dated November 21, 2003 reinstated health benefit coverage as of July 31, 1999.

In a letter dated January 6, 2004, the Office advised appellant that it made a preliminary determination that an overpayment of \$5,889.33 was created during the period September 24, 1999 to November 29, 2003 because it had failed to deduct health benefit insurance premiums. The Office indicated that from September 24, 1999 to January 1, 2000 the Office should have deducted \$333.57 for FEHB code FR2 and for January 2, 2000 to November 29, 2003 \$5,555.76 should have been deducted for FEHB code 5E2. The Office made a preliminary determination that appellant was not at fault in creating the overpayment. She was requested to complete and return information pertaining to her financial situation.

Appellant submitted an overpayment recovery questionnaire (Form OWCP-20) reporting \$2,022.78 in monthly income and \$2,802.72 in monthly expenses. With respect to assets, appellant reported \$6,674.88 in a bank checking account and \$188.78 in a bank savings account. She supported a 10-year-old son.

By decision dated June 14, 2004, the Office finalized the preliminary determination that an overpayment of \$5,889.33 was created. The Office denied waiver on the grounds that appellant had over \$5,000.00 in assets. The Office directed appellant to repay the overpayment by sending a payment of \$200.00 each month.<sup>1</sup>

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

The Board has held that if a claimant is enrolled in a health benefits plan under the FEHB Program and pursues compensation benefits, when the Office determines she is entitled to compensation, it must deduct appropriate health benefit premiums unless the claimant cancelled her health benefit enrollment.<sup>2</sup>

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<sup>1</sup> The Office indicated that the first payment was due within 30 days, and if appellant wanted to repay the entire amount she should contact the Office. There is no indication that a final decision was made to repay the overpayment by deducting from continuing compensation. The record contains a termination of compensation decision issued after the filing of the appeal; that decision is not before the Board on the current appeal. *See* 20 C.F.R. § 501.2(a).

<sup>2</sup> *See Leticia Taylor*, 47 ECAB 198 (1995).

## **ANALYSIS -- ISSUE 1**

The record indicates that appellant was enrolled in the FEHB Program at the time of injury. Appellant did not cancel her enrollment and therefore the Office was obligated to deduct health benefit insurance premiums appropriate for the enrollment code selected. The record establishes that the compensation payments commencing September 24, 1999 did not make any deductions for health benefit insurance premiums. Accordingly, an overpayment of compensation was created.

With respect to the amount, the Office determined that, for the period September 24, 1999 to January 1, 2000, \$333.57 should have been deducted for enrollment code FR2. For the period January 2, 2000 to November 29, 2003, \$5,555.76 should have been deducted for enrollment code 5E2. Therefore an overpayment of \$5,889.33 was created due to the failure to deduct health benefit insurance premiums in this case.

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

Section 8129(b) of the Federal Employees' Compensation Act<sup>3</sup> provides: "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> Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses" and, also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.<sup>5</sup> For waiver under the "defeat the purpose of the Act" standard, appellant must show that she needs substantially all of her current income to meet current ordinary and necessary living expenses, and that her assets do not exceed the resource base.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101 *et seq.*

<sup>4</sup> 5 U.S.C. § 8129(b).

<sup>5</sup> Office procedures provide that the assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or dependent plus \$600.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200 (September 1994).

<sup>6</sup> See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; (b) the individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.

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

Appellant was found to be without fault in the creation of the overpayment and she reported assets greater than the \$5,000.00 resource base for an individual with one dependent. The OWCP-20 form listed \$6,674.88 in a bank account.<sup>7</sup> Since appellant's assets exceed the resource base, recovery of the overpayment would not defeat the purpose of the Act. With respect to whether recovery would be against equity and good conscience, appellant did not allege or provide evidence that she gave up a valuable right or changed her position for the worse in reliance of the overpayment. Moreover, the evidence did not establish that appellant would experience a severe financial hardship in attempting to repay the debt; as noted above, appellant reported over \$6,000.00 in a checking account.

The Board finds that the evidence of record does not establish that waiver of the overpayment is warranted in this case. Appellant did not establish that recovery would defeat the purpose of the Act or be against equity and good conscience under the criteria set forth at sections 10.436 and 10.437. Accordingly, the Board finds that the Office properly denied waiver of the overpayment. Since the June 14, 2004 decision did not indicate that recovery of the overpayment would be made by deductions from continuing compensation, the Board lacks jurisdiction over the issue.<sup>8</sup>

### **CONCLUSION**

The Board finds that an overpayment of compensation of \$5,889.33 was created due to the failure to deduct health benefit premiums for the period September 24, 1999 to November 29, 2003. The Board further finds that appellant was not entitled to waiver of the overpayment as the evidence of record did not establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

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<sup>7</sup> On appeal, appellant stated that the amount in the bank account reflected money deposited from student loans. The Board may review only evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant did not provide evidence to the Office regarding the bank account funds.

<sup>8</sup> See *Levon H. Knight*, 40 ECAB 658 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 14, 2004 is affirmed.

Issued: February 17, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member