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A.A., Appellant)	
)	
and)	Docket No. 08-1146
)	Issued: January 15, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
New Haven, CT, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On March 7, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 6, 2008, which finalized an overpayment of compensation in the amount of \$5,121.54 for which waiver was denied. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$5,121.54, because health benefits insurance premiums were not deducted from her compensation checks during the period January 7, 1995 to January 1, 1999; and (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly determined to recover the overpayment at the rate of \$200.00 every four weeks from her continuing compensation payments.

FACTUAL HISTORY

On November 28, 1994 appellant then a 37-year-old window clerk, filed an occupational disease claim for right foot pain. The Office accepted the claim for sesamoiditis right foot, release of several pedal nerves and tendons with release of three compartments in the right foot, with surgery on January 6, 1995. Appellant stopped work as of January 6, 1995. She received appropriate compensation and medical benefits and was placed on the periodic rolls.

On October 6, 1997 appellant was notified of her compensation benefits and how they would be computed.

A daily computation log dated September 26, 1997 noted that appellant's weekly pay rate was \$684.69 per week or a net salary of \$2,173.88 per month. The documents indicated that there were no health benefits codes and no health benefits withholding dates.

On March 4, 1999 appellant completed a Federal Employee Health Benefits (FEHB) enrollment form and selected the box indicating that she had elected not to enroll in the FEHB program. The employing establishment indicated that the form was received on March 24, 1999 and that the date of the election would be March 28, 1999.

In a worksheet dated January 27, 1999, the Office determined that appellant received an overpayment because her health insurance premiums were not deducted from January 7, 1995 through January 1, 1999. For the period January 7 to November 10, 1995, the Office found that the premiums were \$16.58 per pay period. It noted that appellant received 22 payments during this time frame, which was equal to \$364.76. For the period November 11, 1995 to January 5, 1996, the Office noted that the premiums were \$45.65 per pay period and that appellant received four payments which was equal to \$182.60. For the period January 6, 1996 to January 3, 1997, the premiums were \$43.61 per pay period. The Office found that appellant received 26 payments equal to \$1,133.86. For the period January 4, 1997 to January 2, 1998, the premiums were \$49.95 per pay period. The Office noted that appellant received 26 payments equal to \$1,298.70. For the period January 3, 1998 to January 1, 1999, the premiums were \$82.37 per pay period and appellant received 26 payments equal to \$2,141.62. It added these amounts due to determine that appellant received a total overpayment in the amount of \$5,121.54.¹ The Office advised that appellant had contacted the insurance carrier and confirmed that she used her health benefits "constantly even in 1998...."

On February 22, 2000 the Office issued a preliminary determination indicating that appellant had been overpaid in the amount of \$5,121.54, which occurred because health benefits insurance premiums were not deducted from her compensation for the period January 7, 1995 through January 1, 1999. It made a preliminary finding that she was without fault in creating an overpayment. The Office informed appellant of her right to challenge the amount of the overpayment or request a waiver of the overpayment by requesting a telephone conference, a request for a written review of the record, or a request for a prerecoupment hearing. If appellant wished waiver of the overpayment, she was directed to submit financial information by

¹ The record does not reflect that appellant received these worksheets.

completing an overpayment recovery questionnaire. The Office advised that the form should be accompanied by supporting financial documentation such as income tax returns, bank account statements, bills and canceled checks, plus any other documentation to support the income and expenses shown on the form. Appellant was advised that, if she failed to provide the requested information within 30 days, the Office would deny waiver.

By letter dated March 1, 2000, appellant stated that she had contacted the Office to confirm who had responsibility for payment of her health benefits. She contended that she was informed that she was not responsible for the premiums and did not believe that it was her fault that an overpayment had occurred. Appellant completed an overpayment recovery questionnaire and requested a telephone conference. She indicated that her monthly expenses were \$5,000.00.

By letters dated July 20 and November 13, 2001, the Office advised appellant that it received her March 1, 2000 letter and request for waiver. It requested that she complete a new overpayment form, as her previous form was incomplete and did not list her monthly earnings or itemize any expenses.

Appellant submitted an overpayment recovery questionnaire noting her monthly income as \$4,446.00 and her monthly expenses as amounting to \$4,072.00. She also indicated that her husband had recently passed away and she had not yet received his medical bills.

In a letter dated November 5, 2004, the Office again informed appellant that her overpayment form was outdated and requested that she submit an updated form. It provided her 15 days to submit the requested information. Appellant submitted an overpayment recovery questionnaire dated November 15, 2004 noting her monthly income as \$4,069.87 and her monthly expenses as amounting to \$4,047.46. She also indicated that she had savings of \$28,000.00 from life insurance following the death of her husband.

By letter dated October 31, 2007, the Office advised appellant that she must complete an updated overpayment recovery questionnaire before it could conduct a telephone conference. Appellant was advised to complete the form and return it within 15 days.

On November 14, 2007 the Office received an updated overpayment recovery questionnaire. Appellant disputed the overpayment because she never received any statements saying that she was receiving "any form of health benefits payment deductions." She listed her monthly income as \$5,618.00 and her monthly expenses as \$5,591.63. Appellant also had cash and savings in the amount of \$4,228.00. She did not supply any documentation to support her expenses, which included \$2,050.00 in other expenses which were not specifically identified.

By decision dated February 6, 2008, the Office finalized its finding that appellant had received an overpayment of compensation in the amount of \$5,121.54, for which she was not at

fault. It found that she was not entitled to waiver of recovery of the overpayment and directed recovery from continuing compensation at the rate of \$200.00 each four weeks.²

LEGAL PRECEDENT -- ISSUE 1

The regulations of the Office of Personnel Management, which administers the 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.”³

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.”⁴

ANALYSIS -- ISSUE 1

In this case, deductions for health insurance premiums were not made from appellant’s compensation payments for the period January 7, 1995 to January 1, 1999. The Office determined that health benefits of \$5,124.54 should have been deducted from her compensation for this period as she had elected enrollment and premiums were not deducted. Appellant disputed the overpayment contending that she never received any statements saying that she was receiving “any form of health benefits payment deductions.” However, on March 4, 1999 appellant completed FEHB enrollment form and selected the box electing not to continue her enrollment in the FEHB program. The Office confirmed that appellant used her health insurance benefits extensively during this time frame, noting that she used her health benefits “constantly even in 1998.” Other evidence from the employing establishment and her insurer also confirm that she was covered during the period in question. The Office calculated appellant’s share of the premiums, which were not withheld from her compensation payments and determined an overpayment in the amount of \$5,121.54.

² The Office indicated that on January 16, 2008 a call was placed to appellant to schedule a conference, which was set for January 24, 2008. However, it indicated that appellant did not answer her telephone on the date of the scheduled conference.

³ See 5 C.F.R. § 890.502(a)(1); see *John Skarbek*, 53 ECAB 630 (2002).

⁴ *Id.* at § 890.502(c).

As no health benefit deductions were made from her compensation during this time period and there is no evidence that she cancelled her health benefits enrollment, until March 4, 1999, the Board finds that an overpayment was created in the amount of \$5,124.54 from January 7, 1995 to January 1, 1999, due to the nonwithholding of health insurance premiums.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of the Federal Employees' Compensation 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.⁵

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.”⁶

ANALYSIS -- ISSUE 2

Although appellant was found without fault in creating the \$5,121.54 overpayment, she bears responsibility for providing the financial information necessary to support her request for waiver. She submitted several overpayment recovery questionnaires, the most recent dated November 14, 2007, which revealed monthly income of \$5,618.00, expenses of \$5,591.63 and \$4,228.00 cash on hand. Although the Office asked appellant to submit supporting financial documents including, copies of bills supporting the expenses listed, she did not respond within the 30-day time period. It explained that this information was necessary to consider the question of waiver and to determine a reasonable method for collection. The Office properly explained that failure to submit the requested information would result in the denial of waiver. Because appellant failed to submit sufficient evidence, as requested by the Office, showing that recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience, the Board finds that the Office properly denied waiver of the recovery of the overpayment pursuant to 20 C.F.R. § 10.438(b).

⁵ 5 U.S.C. § 8129.

⁶ 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. 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.”⁷

ANALYSIS -- ISSUE 3

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, she completed an overpayment recovery questionnaire but, failed to submit additional supportive financial documents requested by the Office prior to the issuance of the February 6, 2008 overpayment decision.

In cases where the claimant is being paid compensation on the periodic rolls and the claimant does not respond to the preliminary overpayment decision, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible.⁸ Furthermore, without the appropriate financial documentation as required by 20 C.F.R. § 10.441, the Office was unable to consider her financial circumstances. On appeal, appellant contends that she timely submitted the requested financial information. However, as noted above, she did not submit the supporting financial documentation. The Board finds that the Office did not abuse its discretion in following its regulations and deducting \$200.00 every four weeks from her continuing compensation payments.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$5,121.54 from January 7, 1995 to January 1, 1999. The Board further finds that the Office properly denied waiver of the recovery of the overpayment. The Board finds that the Office properly required repayment of the overpayment by deducting \$200.00 from appellant's continuing compensation payments.

⁷ 20 C.F.R. § 10.441.

⁸ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (October 2004).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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