



delivering mail. The Office accepted the claim for L5-S1 spondylolisthesis and placed appellant on the periodic rolls for temporary total disability effective March 26, 1981.<sup>1</sup>

In a letter dated October 7, 2004, the Office informed appellant that a refund was owed to him as it had been deducting health benefits for plan 322 since April 12, 1987 when it should have been deducting health benefits for plan 892 for the period beginning March 12, 1987 for 17½ years. The Office informed appellant that the refund would “be broken up into three or four checks” as the Office “cannot pay the refund in one check.”

In an October 25, 2004 worksheet, the Office calculated appellant was due a refund of \$11,890.38 which would “be made in 2 payments of \$5,945.19 each.”

In a letter dated July 18, 2005, the Office preliminarily determined that appellant had received an overpayment of compensation in the amount of \$5,945.19 that arose due to the issuance of two compensation payments refunding health benefit premiums for the period April 12, 1987 to October 2, 2004. The Office noted a check in the amount of \$5,945.19 was issued on October 29, 2004 and a second check in the same amount was issued on November 4, 2004. The Office preliminarily determined that appellant was at fault in the creation of the overpayment on the basis that he accepted a payment he should have known was incorrect as both payments were issued within a week.

In an August 6, 2005 letter, appellant contended that there was no overpayment of compensation as he never asked for the payments and he had been informed that he was owed a refund which the Office would pay in three or four checks. He also contended that he was not at fault in the creation of the overpayment and requested waiver.

On August 8, 2005 appellant requested a review of the written record by an Office hearing representative.

By decision dated August 22, 2005, the Office found that appellant received an overpayment of compensation in the amount of \$5,945.19 due to receipt of issuance of two compensation payments refunding health benefit premiums for the period April 12, 1987 to October 2, 2004. The Office found that the preliminary finding that he was at fault in the matter of the overpayment was correct on the basis that he accepted compensation payments he should have known were incorrect. Thus, the Office found appellant was not entitled to waiver as he was at fault in the creation of the overpayment. Lastly, the Office determined repayment in the amount of \$1,500.00 would be withheld from continuing compensation.

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

Section 8129(a) of the Act provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations

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<sup>1</sup> Appellant retired due to disability effective October 21, 1978. On April 19, 1986 appellant elected to receive benefits under the Federal Employees’ Compensation Act.

prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>2</sup>

The Office of Personnel Management (OPM), rather than the Office, has jurisdiction over the matter of health insurance deductions from compensation and enrollment under the Federal Employees’ Health Benefits (FEHB) Program.<sup>3</sup> OPM regulations regarding the FEHB Program provide that 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 due the United States in the amount of the proper employee withholding required for that pay period.<sup>4</sup> The regulations further provide that an agency that withholds less than or none of the proper health benefits contributions from 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 5 U.S.C. § 8906 to OPM for deposit in the Employees’ Health Benefits Fund.<sup>5</sup>

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

The Board finds that appellant did not receive an overpayment of \$5,945.19. In the instant case, deductions were taken out for the wrong health care plan and thus appellant had been charged a higher premium for his health care plan. In a letter dated October 7, 2004, the Office informed appellant that a refund was owed as it had been deducting health benefits for plan 322 since April 12, 1987 when it should have been deducting health benefits for plan 892 for the period beginning March 12, 1987 for a total of 17½ years. The Office informed appellant that the refund would “be broken up into three or four checks” as the Office “cannot pay the refund in one check.” In an October 25, 2004 worksheet, the Office calculated appellant was due a refund of \$11,890.38 which would “be made in two payments of \$5,945.19 each.” The Office correctly found that appellant received two checks in the amount of \$5,945.19, which were issued on October 29 and November 4, 2004. These two checks when totaled together represent the amount of the refund owed appellant or \$11,890.38. Contrary to the Office’s finding, the refund due appellant for an overpayment of health care benefits was not issued in one check. The October 7, 2004 letter informed appellant that a refund would be broken up into more than one check and the October 25, 2004 worksheet indicated there would be two payments of \$5,945.19 each. The record establishes appellant received two payments in the amount noted by the October 25, 2004 worksheet. As appellant received the amount the Office determined should be refunded and paid in the manner described by appellant, *i.e.*, more than one check would be issued, there is no overpayment of compensation.

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<sup>2</sup> 5 U.S.C. § 8129.

<sup>3</sup> See *Raymond C. Beyer*, 50 ECAB 164 (1998).

<sup>4</sup> 5 C.F.R. § 890.502(a)(1).

<sup>5</sup> 5 C.F.R. § 890.502(c)(1); see *John Skarbek*, 53 ECAB 630 (2002); *Jennifer Burch*, 48 ECAB 633 (1997).

**CONCLUSION**

The Board finds that the Office improperly determined that appellant received an overpayment in the amount of \$5,945.19 for the period April 12, 1987 to October 2, 2004 due to the receipt of a duplicate compensation payment refunding health benefit premiums.<sup>6</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 22, 2005 is reversed.

Issued: June 8, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> In view of the Board's disposition of the case, the issues of fault and repayment are moot.