

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

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**N.P., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Richardson, AK, Employer**

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**Docket No. 07-123  
Issued: August 10, 2007**

*Appearances:*  
*David Holdsworth, Esq., for the appellant*  
*Office of the Solicitor, for the Director*

Oral Argument July 10, 2007

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 17, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 27, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office properly determined that an overpayment of \$59,204.42 was created from August 12, 1982 to September 6, 2003 for failure to deduct health benefit insurance premiums; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly found that the overpayment should be collected by deducting \$400.00 from appellant's continuing compensation payments.

**FACTUAL HISTORY**

The Office accepted that appellant sustained an acute lumbosacral strain and aggravation of degenerative disc disease as a result of a February 3, 1978 lifting incident in the performance of duty. He began receiving compensation for temporary total disability.

Appellant periodically submitted information relevant to receipt of compensation benefits. The record indicates, for example, that appellant was divorced on January 10, 1989; remarried on March 7, 1989 and divorced on November 30, 1992. He also provided information regarding current dependants on CA-1032 forms.

In a letter dated October 8, 2003, the Office advised appellant of a preliminary determination that an overpayment of compensation had occurred. The Office explained that health benefit insurance premiums had not been deducted from his continuing compensation payments from August 12, 1982 to September 6, 2003. The amount of the overpayment was reported as \$66,930.70. The Office also made a preliminary determination that appellant was not at fault in creating the overpayment.

The record contains an undated, handwritten memorandum calculating the amount of the overpayment. The memorandum referred to Blue Cross Blue Shield "Code 105" for the years 2002 and 2003 and "Code 102" for the years from 1982 to 2001. For each year an amount owed for the claimant and the employing establishment was reported based on a periodic roll cycle. The total amount for the period August 12, 1982 to September 6, 2003 was reported as \$66,930.70 for the employing establishment and \$68,804.42 for the claimant.

Appellant requested a precoupment hearing before an Office hearing representative, which was held on April 28, 2004. By decision dated July 22, 2004, the Office hearing representative finalized the preliminary determination of a \$66,930.70 overpayment. The hearing representative denied waiver of the overpayment based on the financial evidence of record and determined the overpayment should be recovered by deducting \$400.00 from continuing compensation payments.

Appellant filed an appeal with the Board. By order dated March 27, 2006, the Board granted the Director's motion to remand to clarify the amount of the overpayment. In a letter dated June 21, 2006, the Office advised appellant that the amount of the overpayment was \$68,804.42, minus \$9,600.00 already paid, or \$59,204.42. The Office included a calculation of the overpayment based on the prior handwritten memorandum. For the year 2001, the Office noted, "\$278.64 x 13 periodic roll cycles" or a total owed of \$3,622.32 for this period. No explanation of insurance codes or other information was provided. The Office requested that appellant submit current financial information.

By decision dated July 27, 2006, the Office determined that an overpayment of \$59,204.42 was created from August 12, 1982 to September 6, 2003. The Office denied waiver of the overpayment, finding that appellant had not submitted current financial information. Appellant was advised the overpayment would be recovered by deducting \$400.00 from continuing compensation payments.

### **LEGAL PRECEDENT**

The regulation of the Office of Personnel Management (OPM), which administers the Federal Employee Health Benefits (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 due to the United States in the amount of the proper employee withholding required for that pay period.”

### ANALYSIS

In the present case, appellant does not contest that the compensation payments he received from August 12, 1982 to September 6, 2003 failed to deduct for health benefit insurance premiums. As noted above, when the proper employee withholding is not made during a period of enrollment, the claimant incurs indebtedness. The Board finds that an overpayment of compensation was created due to the failure to deduct health insurance premiums in this case.

Appellant does contest the amount of the overpayment. The Office determined that the actual amount that should have been deducted from August 12, 1982 to September 6, 2003 was \$68,804.42. Since appellant had paid \$9,600.00, the stated overpayment was \$59,204.42.

With respect to the amount of the overpayment, the Office is required to provide a clear explanation as to how the amount was calculated.<sup>1</sup> The information provided by the Office consisted of listing by year the amount owed by appellant, based on a specific amount for a periodic roll cycle. The amounts reported were apparently based on the handwritten, undated memorandum submitted to the record in October 2003. The Office failed to provide any relevant information as to how these amounts were calculated and why the figures were correct based on the factual history of the case. For example, the record clearly indicated that during the period appellant received compensation his marital status had changed. A divorce decree indicated that he was divorced as of November 30, 1992, and on subsequent CA-1032 forms appellant did not claim dependants. The handwritten memorandum made brief reference to codes 102 and 105, which are codes representing family coverage.<sup>2</sup> The Office did not adequately discuss the relevant factual history and explain why the specific amounts for health benefit deductions were appropriate for a specific period of coverage.

The case will be remanded to the Office for proper findings with respect to the amount of the overpayment in this case. After such further development as the Office deems necessary, it should issue an appropriate decision on the overpayment issues. In view of the Board’s findings, the remaining issues will not be addressed in this appeal.

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<sup>1</sup> See *James Tackett*, 54 ECAB 611 (2003); *Sandra K. Neil*, 40 ECAB 924 (1989).

<sup>2</sup> See, e.g., *Elmer C. Jones*, Docket No. 04-917 (issued October 12, 2004).

**CONCLUSION**

The Office did not provide an adequate explanation as to the amount of the overpayment and therefore the case is remanded for further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 27, 2006 is affirmed, in part as to the finding of overpayment. The decision is set aside on the amount of the overpayment and the case remanded for further action consistent with this decision of the Board.

Issued: August 10, 2007  
Washington, DC

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

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

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