

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

G.K., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, WHITING FIELD, Milton, FL,
Employer**

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**Docket No. 08-1620
Issued: July 2, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2008 appellant filed a timely appeal from the March 10, 2008 merit decision of the Office of Workers' Compensation Programs which found that appellant received an overpayment of compensation in the amount of \$21,589.11 and directed repayment as waiver of the recovery of the overpayment was not warranted. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the Office's decision.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$21,589.11 for the period March 13, 2000 through December 22, 2007 for failure to withhold health insurance premiums; (2) whether the Office properly denied waiver of the recovery of the overpayment; and (3) whether the Office properly set the rate of recovery at \$300.00 from continuing compensation payments.

On appeal appellant contends the financial form he submitted was not correct in indicating \$681.26 in discretionary income and that he is without resources to repay the debt.

FACTUAL HISTORY

On April 5, 1989 appellant, then a 54-year-old planner and estimator, slipped on a step and fell onto a concrete sidewalk sustaining injuries to his lower back and left leg. The Office accepted appellant's claim for low back strain, lumbar strain, left hip strain and aggravation of preexisting herniated nucleus pulposus at L5-S1 levels with radiculopathy. Medical benefits and compensation were paid. By decision dated June 12, 2000, the Office found that appellant's actual earnings as a management assistant for the employing establishment fairly and reasonably represented his wage-earning capacity. By decision dated January 5, 2001, it denied appellant's claim for a recurrence as of June 2, 2000. This decision was affirmed by the Board on May 9, 2003.¹

On February 4, 2008 the Office made a preliminary determination that appellant received an overpayment in the amount of \$21,589.11 because health insurance premium deductions were erroneously dropped and no deductions were made for the period March 13, 2000 through December 22, 2007. A computer print out summarized the checks issued during this period and reflect that deductions were not made for health insurance premiums. The Office noted that premiums should have been deducted for HBI code 105 from March 13, 2000 through March 19, 2005 in the amount of \$12,243.25 and from March 20, 2005 through December 22, 2007 in the amount of \$9,345.86, or a total of \$21,589.11. It made a preliminary determination that appellant was at fault in the creation of the overpayment. The Office provided instructions and forms to appellant with regard to proper procedures for contesting the overpayment and provided appellant the Overpayment Recovery Questionnaire to complete.

Appellant completed the forms and checked a box indicating that he believed that an overpayment occurred through no fault of his own and requested waiver. He also completed a financial questionnaire and indicated that he had no cash on hand and had no stocks or bonds. Appellant listed his total monthly income as \$3,198.26 which consisted of his income of \$1,229.26, social security benefits of \$384.00 and his spouse's income of \$1,585.00. He listed total monthly expenses of \$2,517.00. These expenses were broken down as \$275.00 for rent or mortgage, \$400.00 for food, \$150.00 for clothing and \$942.00 for utilities, \$500.00 for other expenses, \$100.00 for Pen Air, \$100.00 for HSB Card and \$50.00 for Sears.

By decision dated March 10, 2008, the Office determined that an overpayment occurred in the amount of \$21,589.11 due to the fact that premium deductions for health benefits insurance were not deducted from his compensation checks from March 13, 2000 through December 28, 2007. It found that appellant was not at fault in the creation of the overpayment, noting his age. However, the Office found that appellant had approximately \$681.26 in discretionary income resources to repay the current debt. It found that the sum of \$300.00 would be withheld from each of appellant's continuing compensation payments commencing March 16, 2008 until the overpayment was paid in full. The Office waived five percent interest on the collection payments.

¹ Docket No. 03-366 (issued May 9, 2003).

LEGAL PRECEDENT

The regulations of the Office of Personnel Management (OPM), which administer 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 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

The Board finds that appellant received an overpayment of compensation as premium deductions for health insurance were not made as of March 13, 2000. Appellant did not pay health insurance premiums for the period March 13, 2000 through December 22, 2007, as they were not withheld from his continuing compensation payments.² The Office determined that the fact that health insurance premiums were not deducted from appellant’s compensation checks during this time period resulted in an overpayment in the amount of \$21,589.11.

The Office, in its worksheets, found that appellant should have paid \$12,243.25 for health insurance premiums from March 13, 2000 through March 29, 2005 and \$9,345.86 for the period March 20, 2005 through December 22, 2007, or a total of \$21,589.11.

However, the Board finds that this case is not in posture for decision on the amount of the overpayment. The Office did not explain in detail how the insurance premiums were calculated. Although it submitted worksheets indicating the amount that should have been withheld, there is insufficient explanation as to how this amount was calculated. There is no evidence as to the source of the information concerning the premiums due. The Board is unable to determine if the Office’s calculation that appellant was overpaid in the amount of \$21,589.11 is correct. An overpayment decision must contain a clearly written explanation as to how the amount was calculated.³ The case will be remanded for a detailed explanation by the Office on how the amount of the overpayment was calculated and provide adequate documentation to support its determination. After such development as it deems necessary, the Office shall issue an appropriate decision.⁴

² The employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment for every pay period during which his or her enrollment continues. *See John Skarbek*, 53 ECAB 630 (2002).

³ *See Jenny M. Drost*, 56 ECAB 587 (2005).

⁴ Given the Board’s findings, issues of waiver and method of recovery are moot.

CONCLUSION

The Board finds that an overpayment was created as health insurance premiums were not deducted from appellant's compensation as of March 13, 2000. The case is not in posture for decision as to the amount of overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2008 is affirmed as to fact of overpayment and set aside as to amount. The case is remanded for further consideration consistent with this opinion.

Issued: July 2, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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