

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Portland, ME, Employer)

**Docket No. 11-1274
Issued: September 15, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 10, 2011 appellant filed a timely appeal from a March 31, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 OWCP properly found an overpayment of \$26,941.88 was created from July 26, 2003 to December 18, 2010 due to a failure to deduct health benefit insurance premiums; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP properly determined the overpayment would be recovered by deducting \$200.00 from continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant filed a claim for a traumatic injury (Form CA-1) on November 26, 1990. The claim was accepted for a cervical sprain, acute cerebrovascular disease, brachial plexus lesions, cervical spondylosis without myelopathy, diplopia and headache. As of July 13, 2002 appellant had stopped work and received compensation based on loss of wage-earning capacity. The payments did not deduct for her health benefit insurance (HBI) premiums.

On December 22, 2010 OWCP received information regarding appellant's health benefit insurance enrollment. The evidence established that appellant was enrolled in the Federal Employee's Health Benefit (FEHB) plan since 1989 under enrollment code 105. A memorandum dated August 12, 2003 from the employing establishment indicated that effective July 26, 2003 FEHB enrollment was being transferred because she was receiving OWCP benefits.

By letter dated February 9, 2011, OWCP advised appellant of a preliminary determination that an overpayment of \$26,941.88 was created because it failed to deduct HBI premiums from compensation paid July 26, 2003 to December 18, 2010. As to how the amount was calculated, OWCP did not provide additional information. The record contains a worksheet dated January 26, 2011 stating that for the period July 26, 2003 to December 18, 2010 the HBI premium for enrollment code 105 was \$26,941.88. With regard to fault, OWCP found appellant was not at fault in creating the overpayment. Appellant was advised to submit relevant financial information regarding waiver of the overpayment within 30 days. She did not respond.

By decision dated March 31, 2011, OWCP finalized the \$26,941.88 overpayment of compensation. It denied waiver of the overpayment as appellant had not submitted any financial information. In addition, OWCP found the overpayment would be recovered by deducting \$200.00 from her continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

The regulations of the Office of Personnel Management (OPM), which administers the 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."

In addition, 5 C.F.R. § 890.502(d) provides: "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 section 8906 of the Title 5, United States Code, to OPM for

deposit in the Employees Health Benefits Fund.” When OWCP deducts less than the proper health benefit premium for the coverage selected, an overpayment of compensation is created.²

ANALYSIS -- ISSUE 1

The record establishes that appellant enrolled in the FEHB program under enrollment code 105. There is no indication that she ever withdrew her enrollment while receiving compensation benefits. According to the evidence of record, the compensation payments appellant received from July 26, 2003 to December 18, 2010 did not include any deduction for HBI premiums. As noted, when OWCP deducts less than the proper HBI premium for the coverage selected, there is an overpayment created. The Board finds that an overpayment was created in this case with respect to HBI premiums that were not deducted for this period.

As to the amount, however, the record contains little probative evidence. As the Board has explained, OWCP needs to support its findings as to the amount of an overpayment for failure to deduct HBI premiums.³ The only evidence in the record is a worksheet that does not explain how the amount was determined.⁴ There is no documentation from OPM or other relevant source regarding the proper amount of the HBI premiums for any specific year or specific period. The evidence of record does not provide appellant or the Board enough information to determine if the calculation of the overpayment amount was correct. A computerized worksheet that simply indicates the premium for enrollment code 105 was \$26,941.88 for the period covered is not sufficient documentation. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.⁵

Moreover, the evidence raises additional questions regarding the appropriate amount of compensation. The evidence of record indicates that the compensation paid since July 13, 2002 was based on an adjustment for a wage-earning capacity resulting from actual earnings. The Board is unable to find evidence that a formal wage-earning capacity determination based on actual earnings was issued. In addition, there is no evidence that a continuing offset of compensation for actual earnings was proper, as OWCP indicated appellant was not working.⁶

The case will be remanded to OWCP for a proper determination as to the amount of the overpayment. OWCP should issue an appropriate preliminary determination regarding the amount of the overpayment. As to the waiver and repayment issues, the Board will not consider

² See *John Skarbek*, 53 ECAB 630 (2002).

³ *G.K.*, Docket No. 08-1620 (issued July 2, 2009).

⁴ It is not clear from the record that this worksheet was provided to appellant.

⁵ See *Jenny M. Drost*, 56 ECAB 587 (2005).

⁶ Actual earnings that do not represent wage-earning capacity may be offset from compensation, but only during the periods where appellant was working. *D.W.*, Docket No. 10-361 (issued December 23, 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment, Determining Wage-Earning Capacity*, Chapter 2.814.7(d)(3) (June 1996).

theses issues at this time.⁷ On remand appellant will have an opportunity to submit and have OWCP consider relevant financial evidence on these issues. OWCP should also issue a decision with respect to compensation paid since July 13, 2002, explaining how the pay rate was determined and the compensation calculated.

CONCLUSION

The Board finds an overpayment was created due to the failure to deduct HBI premiums from July 26, 2003 to December 18, 2010, but the case requires further explanation as to the amount. The case is not in posture for decision with respect to waiver and repayment. In addition, the Board finds that on remand OWCP should issue a decision regarding the use of an adjusted wage-earning capacity pay rate since July 13, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2011 is affirmed with respect to fact of overpayment and fault and set aside and remanded with respect to amount, waiver and recovery.

Issued: September 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

⁷ On appeal, appellant stated that she was unable to meet the 30-day requirement with respect to submission of evidence on the waiver issue, and the record indicated appellant did not submit relevant evidence prior to the March 31, 2011 decision.