

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

T.S., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Polk, LA, Employer**

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**Docket No. 12-624
Issued: August 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) overpayment decision dated December 19, 2011. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 determined that appellant received an overpayment in the amount of \$2,301.20 from January 17, 2010 to August 17, 2011; (2) whether OWCP abused its discretion in denying waiver of the overpayment.

FACTUAL HISTORY

Appellant, a 41-year-old nursing assistant, injured her right ankle on June 30, 2009 when she fell to the floor while getting out of a chair. She filed a claim for benefits, which OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted for right ankle fracture and nonunion of right ankle fracture. OWCP paid appellant appropriate compensation for temporary total disability compensation.

An OWCP memorandum dated January 27, 2010 indicated that appellant's health benefit premiums were being deducted under code 112. An OWCP pay rate worksheet dated January 28, 2010 reflected that she had health benefit premiums of \$292.59 deducted from her monthly compensation checks pursuant to code 112.

In an October 11, 2011 Office of Personnel Management Notice of Change in Health Benefits Enrollment form, it was indicated that appellant's health benefits were being deducted for the wrong code, code 112, instead of the correct code, code 105.

OWCP worksheets dated November 1, 2011, found that an overpayment had occurred in the amount of \$2,301.20 for the period January 17, 2010 to August 17, 2011 because her health benefits premiums were calculated to pursuant to code 112. The overpayment was calculated in the following manner: the difference between the health premiums deducted under code 112, and the health premiums she should have had deducted under code 105 for the period January 17 to 18, 2010 was \$10.88; \$108.81 for the period June 14 to July 3, 2010; \$1,066.45 for the period July 4, 2010 to January 15, 2011; \$1,073.38 for the period January 16 to July 30, 2011; and \$41.68 for the period July 31 to August 17, 2011, for a total overpayment of \$2,301.20.

On November 15, 2011 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$2,301.20 for the period January 17, 2010 to August 17, 2011. It noted that the overpayment had occurred because the appropriate health benefit premiums were not deducted from her continuing compensation payments during the period, and advised appellant that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention or request a precoupment hearing. OWCP advised that appellant had been found without fault in the creation of the overpayment and requested that she complete the enclosed overpayment questionnaire (OWCP-20). Appellant was specifically informed that failure to submit the requested information would result in denial of waiver of the overpayment. She did not respond to this letter.

In a decision dated December 19, 2011, OWCP finalized the preliminary determination regarding the overpayment of \$2,301.20. It found that appellant was not entitled to waiver because she did not respond to the November 15, 2011 preliminary determination and did not complete and submit the attached Form OWCP-20 overpayment questionnaire.

LEGAL PRECEDENT -- ISSUE 1

The regulations of the Office of Personnel Management (OPM), which administers the Federal Employees' Health Benefits 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 to

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.”²

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 applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees’ Health Benefits Fund.³

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁴ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁵ The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,301.20 for the period January 17, 2010 through August 17, 2011.

The record shows that an overpayment occurred because deductions of health benefit premiums from appellant’s compensation were computed pursuant to the wrong code during this period. In its January 27, 2010 memorandum and January 28, 2010 pay rate worksheet OWCP indicated that appellant’s health benefit premiums were being deducted under code 112. An October 11, 2011 OPM Notice of Change in Health Benefits Enrollment form found that appellant’s health benefits were being deducted for the wrong code, code 112, instead of the correct code, code 105. OWCP worksheets dated November 1, 2011, found that an overpayment had occurred in the amount of \$2,301.20 for the period January 17, 2010 to August 17, 2011 because appellant’s health benefits premiums were calculated pursuant to code 112. OWCP calculated the amount of overpayment by taking the amount of health premiums appellant had deducted from her compensation checks from January 17, 2010 through August 17, 2011 during this period under code 112, and subtracting the amount of health premiums appellant should have had deducted from her compensation checks during this period under code 105 to arrive at

² 5 C.F.R. § 890.502(a)(1).

³ *Id.* at § 890.502(c).

⁴ *Supra* note 2.

⁵ *Supra* note 3.

⁶ See *James Lloyd Otte*, 48 ECAB 334 (1997); *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

an overpayment of \$2,301.20. Based on this determination, OWCP properly found that appellant received an overpayment of compensation in the stated amount during that period.

The record establishes that \$2,301.20 in premiums for health benefits were not deducted from compensation for the period January 17, 2010 through August 17, 2011. Thus, an overpayment was created by the underdeduction of premiums for health benefits. Appellant consequently received an overpayment of compensation due to OWCP's failure to deduct premiums for health insurance coverage under the correct code, code 105.⁷ Therefore, OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,301.20 for the period January 17, 2010 through August 17, 2011.

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁸ An individual should always be found without fault where the overpayment resulted from OWCP error in the under deduction of health benefits or life insurance premiums.⁹

If OWCP finds that, the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹⁰

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹¹

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that she was without fault does not preclude OWCP from recovering all or part of the overpayment.¹² Appellant did not submit a response to OWCP's November 15, 2011

⁷ See *supra* notes 4 through 6 and accompanying text.

⁸ 20 C.F.R. § 10.433(a).

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b) (June 2009).

¹⁰ 20 C.F.R. § 10.434. See 5 U.S.C. § 8129(b).

¹¹ *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

¹² See *George A. Rodriguez*, 57 ECAB 224 (2005).

preliminary determination and did not submit a completed Form OWCP-20. Therefore OWCP acted properly in refusing appellant's request for waiver. OWCP was precluded from evaluating waiver of the overpayment.

Appellant contends on appeal that she should not be responsible for repaying the overpayment because she was not aware that an overpayment had occurred until she received OWCP's November 15, 2011 preliminary determination. As indicated above, however, the fact that appellant was found to be without fault does not relieve her of responsibility for repaying the overpayment. In addition, she argues that she did not complete and submit the Form OWCP-20 because she and her husband did not feel comfortable in submitting their personal, financial information. Appellant indicated that she would have difficulty repaying the overpayment because she had not worked since June 2009; she has not received compensation checks since October 6, 2011; her husband was on social security disability and they had to support an adopted son.

The Board has held that OWCP must rely on a claimant's current financial situation at the time of the waiver determination.¹³ Appellant did not submit the requested financial information prior to the waiver determination and therefore OWCP could not evaluate her financial ability to repay the overpayment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,301.20 for the period January 17, 2010 through August 17, 2011. The Board finds that the overpayment occurred because OWCP neglected to deduct the correct amount of health insurance premiums from appellant's continuing compensation. The Board further finds that OWCP properly denied waiver of the overpayment.

¹³ L.S., 59 ECAB 350 (2008).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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