

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

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C.N., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Sugarland, TX, Employer )

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**Docket No. 12-975  
Issued: October 5, 2012**

*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 February 28, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs (OWCP) overpayment decision dated December 23, 2011. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 \$638.87 from August 11 to October 22, 2011; and (2) whether it abused its discretion in denying waiver of the overpayment.

**FACTUAL HISTORY**

On December 2, 2002 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that he sustained lower back injury while lifting a tub of mail. OWCP initially

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

accepted his claim for lumbar strain. It subsequently accepted the claim for displacement of lumbar intervertebral disc without myelopathy, sprain of the hip and thigh and malignant neoplasm of connective and soft tissue of the lower limb and hip. Appellant stopped work intermittently and received wage-loss compensation benefits. He last stopped work on August 11, 2011 and received compensation on the periodic rolls as of October 23, 2011.

OWCP supplemental rolls payment records dated October 28, 2011 noted that the employing establishment had not provided current pay rate or health benefits information, therefore the pay rate would need to be adjusted once the information was received. A health benefits audit, dated October 28, 2011, calculated that an overpayment had occurred in the amount of \$638.87 for the period August 11 to October 22, 2011 because code 112 health benefits premiums were not deducted from compensation. The overpayment was calculated at a rate of \$8.75 a day for 17 days, equaling \$148.74, for the period August 11 to 27, 2011 and equaling \$490.12 for the period August 28 to October 22, 2011, a total of 73 days. The amount of the overpayment was \$638.87.

On November 23, 2011 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$638.87 for the period August 11 to October 22, 2011. It noted that the overpayment had occurred because the health benefit premiums were not deducted from appellant's compensation payments during the period. OWCP advised him that if he disagreed with the fact or amount of the overpayment he could submit new evidence in support of his contention or request a precoupment hearing. It found appellant without fault in the creation of the overpayment and requested that he complete an 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. He did not respond to this letter.

In a decision dated December 23, 2011, OWCP finalized the preliminary determination regarding the overpayment of \$638.87. It also determined that appellant was not entitled to waiver.

### **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, 20 C.F.R. § 890.502(a)(1) provides:

An 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.<sup>2</sup>

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<sup>2</sup> 5 C.F.R. § 890.502(a)(1).

In addition, 20 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.”<sup>3</sup>

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.<sup>4</sup> An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>5</sup> 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.<sup>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$638.87 for the period August 11 to October 22, 2011.

The record establishes that an overpayment occurred because health benefit premium deductions were not made from appellant’s compensation benefits from August 11 to October 22, 2011. OWCP determined the amount of overpayment by calculating the amount of health premiums that should have had deducted from his compensation checks during this period under code 112, at a daily rate of \$8.75, for the period of 73 days to arrive at an overpayment of \$638.87. Based on this determination, it properly found that appellant received an overpayment of compensation in the stated amount during that period.

The record establishes that \$638.87 in premiums for health benefits were not deducted from compensation for the period August 11 to October 22, 2011. 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 code 112.<sup>7</sup> OWCP properly determined that he received an overpayment of compensation in the amount of \$638.87 for the period August 11 to October 22, 2011.

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<sup>3</sup> *Id.* at § 890.502(c).

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *Supra* note 3 .

<sup>6</sup> *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.

<sup>7</sup> *See supra* notes 4 to 6 and accompanying text.

## 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

## ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that he was without fault does not preclude OWCP from recovering all or part of the overpayment.<sup>12</sup> Appellant did not submit a response to OWCP's November 13, 2011 preliminary determination or submit any completed Form OWCP-20. Therefore OWCP acted properly in refusing his request for waiver under the implementing federal regulations. It was precluded from evaluating waiver of the overpayment.<sup>13</sup>

Appellant contends on appeal that he should not be responsible for repaying the overpayment because he was not at fault for creating the overpayment and followed all

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<sup>8</sup> 20 C.F.R. § 10.433(a).

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

<sup>10</sup> 20 C.F.R. § 10.434. *See* 5 U.S.C. § 8129(b).

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

<sup>12</sup> *See George A. Rodriguez*, 57 ECAB 224 (2005).

<sup>13</sup> 20 C.F.R. § 10.438(b). Failure to submit the requested information within 30 days of the request shall result in denial of the waiver and no further request for waiver shall be considered until the requested information is furnished.

instructions as directed by OWCP. As noted, however, the fact that he was found to be without fault does not relieve him of responsibility for repaying the overpayment.<sup>14</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$638.87 for the period August 11 to October 22, 2011. The Board finds that the overpayment occurred because OWCP neglected to deduct the health insurance premiums from appellant's wage-loss compensation. The Board further finds that OWCP properly denied waiver of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2012  
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

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<sup>14</sup> Appellant failed to respond to a request from the Clerk of the Board to confirm a desire for oral argument in Washington D.C. The request was mailed to him and, in the absence of his confirmation; the Board will decide the appeal on the case record.