

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

J.F., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Hood, TX, Employer**

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**Docket No. 14-1412
Issued: November 6, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 6, 2014 appellant filed a timely appeal from a March 10, 2014 merit decision and a May 6, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.

ISSUES

The issues are: (1) whether OWCP properly found an overpayment of \$510.72 from October 11, 2013 to January 11, 2014 due to the failure to deduct health benefit insurance premiums, for which appellant was not at fault; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP's Branch of Hearings and Review properly denied appellant's April 15, 2014 request for a hearing.

On appeal, appellant asserts that he was not at fault in creation of the overpayment. He explains that he trusted OWCP to process his claim in a proper manner while he recuperated.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on August 26, 2013 appellant, then a 59-year-old motor vehicle operator, sustained internal derangement of the left knee while climbing into a truck. Appellant stopped work on the date of injury.² As of August 26, 2013, he was enrolled in a health benefits insurance program with premiums collected by payroll deductions. Appellant received compensation benefits on the daily rolls beginning on October 11, 2013 and on the periodic rolls beginning November 17, 2013.

In a claim for compensation (Form CA-7) for the period October 11 to 18, 2013, the employing establishment checked a box “no,” indicating that appellant was not reenrolled in a health benefits insurance program on the date of injury. The employing establishment continued to check Box 10a “no” in Forms CA-7 for the periods October 19, 2013 to January 11, 2014. Based on this information, OWCP issued appellant wage-loss compensation for the period October 11, 2013 to January 11, 2014 without deducting health insurance premiums.

In a December 3, 2013 letter, the employing establishment advised that it checked the “no coverage” option on appellant’s CA-7s forms in error. It affirmed that he had been enrolled in the health insurance plan continuously since the date of injury.

In a January 21, 2014 audit worksheet, OWCP calculated that, based on a daily health benefits premium rate of \$6.14, it should have deducted \$55.26 from appellant’s compensation for the period October 11 to 19, 2013. It calculated that, for the three 28-day pay periods from October 20, 2013 through January 11, 2014, \$515.46 should have been deducted from his wage-loss compensation. OWCP added the two results to equal \$570.72.

By notice dated February 4, 2014, OWCP advised appellant of its preliminary determination that he received an overpayment in the amount of \$570.72 as it failed to deduct health insurance premiums from his compensation payments for the period October 11, 2013 to January 11, 2014. It found him without fault in creating the overpayment. Appellant was afforded 30 days to request a telephone conference, prerecoupment hearing or a final decision based on the record and to submit financial information. OWCP also enclosed an overpayment recovery questionnaire (Form OWCP-20) to obtain financial information necessary to consider waiver of the overpayment. Appellant did not complete the overpayment recovery questionnaire or otherwise submit financial information.

By decision dated March 10, 2014, OWCP finalized its preliminary determination, finding a \$570.72 overpayment of compensation from October 11, 2013 to January 11, 2014 as health insurance premiums were not deducted from his compensation. Although appellant was found to be without fault in the creation of the overpayment, OWCP found that he had not justified waiver of recovery of the overpayment as he failed to submit financial information as had been requested. OWCP directed recovery of the overpayment by lump-sum payment of \$570.72.

² Appellant underwent left knee arthroscopy on December 11, 2013, authorized by OWCP.

On March 14, 2014 OWCP received a copy of the February 4, 2014 request form appended to the February 4, 2014 preliminary notice of overpayment. Appellant did not request a telephone conference, precoupment hearing or final decision. He checked a line indicating that he believed that he was not at fault in creation of the overpayment. OWCP sent appellant a March 19, 2014 informational letter regarding his request for an oral hearing. As he did not respond, it spoke to him on April 15, 2014, at which time he confirmed his request for an oral hearing. OWCP interpreted appellant's statement as a request for an oral hearing on the March 10, 2014 final overpayment decision.

By decision dated May 6, 2014, OWCP denied appellant's request for an oral hearing as final overpayment decisions, which was issued in this case on March 10, 2014 did not afford a hearing under 5 U.S.C. § 8124(b). Therefore, appellant's request for hearing was denied.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.³ Section 8129(a) of FECA provides, in pertinent part, that when "an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."⁴

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employees Health Benefits (FEHB) program. The regulations of the Office of Personnel Management (OPM), which administers FEHB program, provide guidelines for registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides that 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 indebtedness 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.⁶

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8102(a).

⁶ 5 C.F.R. at § 890.502 (a)(1).

In addition, 5 C.F.R. § 890.502(c) provides that 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 Title 5 United States Code, to OPM for deposit in the Employees' Health Benefits Fund.⁷

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.⁸

ANALYSIS -- ISSUE 1

The record reflects that OWCP failed to deduct health insurance premiums from appellant's compensation payments for the period October 11, 2013 to January 11, 2014 in the amount of \$570.72 resulting from an erroneous report of the employing establishment. The employing establishment confirmed that appellant remained enrolled in the health benefits program during that period. OWCP explained how the overpayment occurred and provided the explanation to him with the preliminary notice of overpayment.⁹ Appellant does not dispute the fact or amount of the overpayment. The Board finds that an overpayment was created in the amount of \$570.72 due to the failure to withhold health insurance premiums.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰

OWCP regulations, at 20 C.F.R. § 10.438, stated:

“(a) 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. This information will also be used to determine the repayment schedule, if necessary.

⁷ *Id.* at § 890.502(c).

⁸ *L.S.*, Docket No. 14-222 (issued May 6, 2014); *see James Lloyd Otte*, 48 ECAB 334 (1997).

⁹ *L.S.*, *id.*; *see Sandra K. Neil*, 40 ECAB 924 (1989).

¹⁰ 5 U.S.C. § 8129.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”¹¹

ANALYSIS -- ISSUE 2

Although appellant was found without fault in creating the \$570.72 overpayment, he bears responsibility for providing the financial information necessary to support a request for waiver of the recovery. OWCP requested that he provide financial information and submit any request for waiver within 30 days of the February 4, 2014 preliminary overpayment determination. Appellant did not complete the overpayment recovery questionnaire or provide financial information. OWCP noted that her failure to submit the requested information would result in the denial of the waiver. The Board finds that, under these circumstances, OWCP properly denied waiver of recovery of the overpayment pursuant to 20 C.F.R. § 14.438(b).¹²

On appeal, appellant asserts that he was not at fault in creation of the overpayment. He explains that he trusted OWCP to process his claim in a proper manner while he recuperated. As stated above, although appellant was not at fault in creation of the overpayment, OWCP properly denied waiver of recovery as he failed to submit financial information as requested.

LEGAL PRECEDENT -- ISSUE 3

The only review of a final decision concerning an overpayment is to the Board. The provisions of 5 U.S.C. §§ 8124(b) and 8128(a) regarding hearings and reconsideration do not apply to a final overpayment decision.¹³

ANALYSIS -- ISSUE 3

OWCP issued the final overpayment decision on March 10, 2014. On March 14, 2014 it received the procedural request form from the February 4, 2014 preliminary notice of overpayment. Appellant did not request a prerecoupment hearing or telephone conference. OWCP spoke with him on April 15, 2014, at which time he requested an “oral hearing.” It interpreted appellant’s request as one for an oral hearing on the final overpayment determination. OWCP denied this request by May 6, 2014 decision as the only review of a final overpayment decision is to the Board. The Board finds that OWCP’s Branch of Hearings and Review properly found that because OWCP had already issued a final overpayment decision on March 10, 2014, that decision was not subject to the hearing provision under 5 U.S.C. § 8124(b).¹⁴

¹¹ 20 C.F.R. § 10.438.

¹² See also *D.R.*, Docket No. 09-1537 (issued April 15, 2010). See *Madelyn Y. Grant*, 57 ECAB 533 (2006).

¹³ 20 C.F.R. § 10.440(b); see also *Philip G. Feland*, 48 ECAB 485 (1997).

¹⁴ *Id.* at 10.440(b).

CONCLUSION

The Board finds that OWCP properly determined that appellant without fault received an overpayment of compensation in the amount of \$570.72 from October 11, 2013 to January 11, 2014 as health insurance premiums were not withheld from his compensation. The Board further finds that OWCP properly denied waiver of the recovery of the overpayment. The Board also finds that OWCP properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the May 6 and March 10, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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