

the overpayment is subject to waiver of recovery; and (3) whether OWCP properly withheld \$95.00 from appellant's continuing compensation payments beginning December 15, 2013.

On appeal, appellant contends that his spouse was put on his health insurance plan on November 26, 2012, not July 28, 2011. Thus, he argues the period of overpayment is erroneous.

FACTUAL HISTORY

On December 10, 2010 appellant, then a 57-year-old health aid, filed an occupational disease claim alleging that he sustained injuries as a result of doing his regular duties, which included picking up garbage, moving and flipping mattresses, and wiping down beds with chemicals, which he inhaled. OWCP accepted the claim for Teitze's Disease (costochondritis) and bilateral rotator cuff syndrome and paid appropriate benefits. Appellant stopped work on July 28, 2011 and was eventually placed on the periodic compensation rolls. Effective October 14, 2013, he was employed as a laundry worker for the employing establishment.³

On October 26, 2012 appellant elected to change from code number 111 (single coverage) to code 112 (family coverage) because his spouse was to lose her nonfederal plan effective November 4, 2012.

On June 17, 2013 the Federal Employees Health Benefits (FEHB) program issued a Notice of Change in Health Benefits Enrollment code number 111 from the employing establishment to OWCP effective July 28, 2011. In a June 17, 2013 letter, OWCP notified the employing establishment to transfer the enrollment code 111 effective July 28, 2011 as that was the first date of continuous total disability. A copy of the letter was sent to appellant and his attorney of record.

On October 25, 2013 OWCP made the preliminary determination that appellant was overpaid benefits in the amount of \$4,376.36 because it had deducted health premium code 111 and due to a change in his spouse's coverage, he should have had premiums deducted for code 112 during the period July 28, 2011 through October 13, 2013. A calculation of the original payment for health benefits premium code 111 for the period July 28, 2011 through October 13, 2013 and the corrected entitlement for health benefits premium code 112 for the same period was provided. OWCP further determined that appellant was not at fault in the creation of the overpayment. It instructed him of his right to disagree with the amount of the overpayment or to request waiver of the overpayment and instructed him of the procedures for doing so. OWCP noted that appellant had 30 days to submit the requested information and notified him that under 20 C.F.R. § 10.438 failure to submit the requested information within 30 days would result in the denial of waiver. No response to the preliminary decision or additional financial documents were received.

³ By decision dated January 6, 2014, OWCP determined that the position of laundry worker fairly and reasonably represented appellant's wage-earning capacity. By decision dated January 23, 2014, it found that he was overpaid \$275.26 for the period October 14 through 19, 2013 for which he was without fault. As appellant has not appealed these decisions or set forth arguments pertaining to the issues in these decisions, the Board will not address these issues on appeal.

By decision dated January 13, 2014, OWCP finalized the determination that appellant received an overpayment of compensation in the amount of \$4,376.36 for the period July 28, 2011 through October 13, 2013; that he was not at fault in the creation of the overpayment; that waiver was denied; and that the debt could be collected by deducting \$95.00 from his continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

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.⁴ 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.⁵

An employee entitled to disability compensation may continue his or her health benefits under the FEHB program. The regulation of the Office of Personnel Management (OPM), which administers the FEHB program, provides 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 due 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

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

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.⁸ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁹ The Board has recognized that, when an under withholding of health insurance

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ 5 C.F.R. § 890.502(a)(1).

⁷ *Id.* at § 890.502(c).

⁸ *Id.* at § 890.502(a)(1).

⁹ *Id.*

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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that this case not in posture for decision. Effective July 28, 2011, appellant's health benefits were transferred from the employing establishment's to OWCP's payroll office. Appellant was under single coverage (code 111) until he elected family coverage (code 112) effective November 4, 2012. However, deductions were not made from his monetary compensation until October 13, 2013. Once OWCP learned that appellant had health insurance, but no deductions had been made for the premiums for family coverage, it advised him that he had been paid an incorrect rate and that an overpayment was created.

Appellant does not dispute that he received an overpayment. However, he disputes the amount of the overpayment noting family coverage was added in November 2012, not on July 28, 2011. OWCP's calculation of overpayment correctly notes he was paid health benefits premiums code 111 for the period July 28, 2011 through October 13, 2013. However, it incorrectly finds that appellant was entitled to health benefits premiums code 112 for the period July 28, 2011 through October 13, 2013. The record establishes that he was entitled to health benefits premiums code 112 on or after November 4, 2012. Accordingly, OWCP did not provide a proper calculation of the overpayment amount for the period July 28, 2011 through October 13, 2013. A recalculation on the period and amount of compensation appellant was entitled to code 112 family health benefits is required to determine the proper amount of overpayment.¹¹

CONCLUSION

The Board finds that the case is not in posture for decision as OWCP improperly determined the period and amount of compensation appellant was entitled to code 112 family health benefits. Accordingly, the amount of overpayment cannot be determined and the issues pertaining to waiver and recovery from continuing compensation benefits are premature.

¹⁰ 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.

¹¹ In light of the fact the amount of overpayment cannot be determined, the issues pertaining to waiver and repayment of compensation is premature.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2014 decision of the Office of Workers' Compensation Programs is vacated and remanded for further instructions consistent with this decision.

Issued: February 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board