

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

C.M., Appellant)	
)	
and)	Docket No. 18-1120
)	Issued: November 26, 2018
U.S. COURTS, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Little Rock, AR,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2018 appellant filed a timely appeal from an April 12, 2018 merit 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 this case.

ISSUE

The issue is whether appellant is entitled to reimbursement of health benefits insurance (HBI) premiums for the period February 9, 2014 to May 4, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on November 1, 2006 appellant, then a 41-year-old investigator, sustained a medial meniscus tear of her left knee. Appellant stopped work on November 6, 2006 and underwent OWCP-approved anterior cruciate ligament reconstruction and medial/lateral meniscus debridement of her left knee on December 12, 2006. She received wage-loss compensation for periods of partial and total disability. Appellant was terminated by the employing establishment on May 22, 2007 because she did not return to available light-duty work despite the fact that an attending physician had released her to such work. OWCP accepted her claim for a recurrence of disability effective May 23, 2007 and paid her disability compensation on the periodic rolls.

On June 10, 2009 appellant underwent OWCP-authorized left knee surgery, including meniscectomy and anterior cruciate ligament revision surgery. In September 2009, OWCP expanded the acceptance of appellant's claim to include sprain of the acromioclavicular joint of the right shoulder and several additional left knee conditions -- bone contusion, cruciate ligament sprain, re-tear of the medial meniscus, re-tear of the lateral meniscus, and anterior cruciate ligament disruption.

By decision dated February 25, 2010, OWCP terminated appellant's wage-loss compensation effective March 14, 2010 and, by decisions dated July 26, 2010 and February 28, 2011, it denied modification of its termination action.

Appellant appealed to the Board. By decision dated June 6, 2012,³ the Board reversed OWCP's February 28, 2011 decision which had terminated her wage-loss compensation effective March 14, 2010. The Board found that the medical evidence OWCP relied upon for its termination action was insufficiently rationalized to justify the termination of her wage-loss compensation. OWCP returned appellant to the periodic rolls.

On a Form EN1032, signed on February 4, 2013, appellant reported that she had been employed since April 19, 2012 by the Department of Veterans Affairs as a clinical pastoral education resident (student chaplain) at a rate of pay of \$13.17 per hour.

In accordance with the Board's June 6, 2012 decision, OWCP made supplemental payments to appellant to effectively reinstate her wage-loss compensation retroactive to the date of the March 14, 2010 termination. Based on her wages as a clinical pastoral education resident beginning April 19, 2012 and continuing, it determined her percentage of wage-earning capacity under the principles of the *Albert C. Shadrick* case.⁴ OWCP characterized the pay appellant received in this job as a stipend. In making these payments, it deducted HBI premiums for Blue

² Docket No. 16-1638 (issued October 6, 2017).

³ Docket No. 11-1988 (issued June 6, 2012).

⁴ See *Albert C. Shadrick*, 5 ECAB 376 (1953).

Cross Blue Shield (BCBS) health insurance coverage for the period March 14, 2010 to April 16, 2013.

In a November 6, 2013 letter to OWCP, appellant noted that her HBI plan through BCBS had been terminated after her wage-loss compensation was terminated effective March 14, 2010. She indicated that, after the Board reversed the termination of her wage-loss compensation, OWCP deducted HBI premiums for BCBS coverage from the wage-loss compensation it paid her for a three-year period that she could not use her HBI plan. Appellant asserted that OWCP improperly deducted these HBI premiums from her wage-loss compensation and requested that it refund them to her.

As a result of appellant's inquiry, on December 20, 2013 OWCP paid her \$6,830.63 through an electronic funds transfer (EFT) in order to reimburse her for the HBI premiums for BCBS health insurance that were deducted from her compensation payments during the period March 14, 2010 to April 16, 2013. In a payment record for this transaction, it noted that her HBI plan had been terminated on March 14, 2010, but reinstated as of April 17, 2013. OWCP indicated that HBI premium deductions (code 104 for the BCBS plan) were made for the period March 14, 2010 to April 16, 2013 despite the termination of the HBI plan. It advised that it had been confirmed that appellant could not use her HBI plan for this period and that the refund was appropriate given her inability to use the HBI plan.

Appellant telephoned OWCP on January 3, 2014 and advised that, despite being refunded the HBI premiums deducted for the period March 14, 2010 to April 16, 2013, she still was unable to use her HBI plan. In a January 9, 2014 letter to an OWCP regional director, appellant asserted that OWCP had informed her that her HBI coverage would be reinstated effective June 2, 2013, but noted that she confirmed with BCBS that her HBI coverage had not been reinstated despite the fact that OWCP continued to deduct HBI premiums from her wage-loss compensation.

In a January 14, 2014 letter, OWCP advised appellant that it was enclosing a Health Benefits Election Form (Standard Form 2809) that she needed to complete and return with her selection of an HBI plan. In making this selection, it requested that she use an effective date of January 12, 2014. OWCP informed appellant that her HBI coverage would remain in a cancelled status until such time as the Standard Form 2809 was completed and returned.

In a January 23, 2014 letter, appellant requested that OWCP refund her for the HBI premiums from April 17, 2013 to "whatever date in January 2014 the insurance actually become[s] effective." She indicated that she mailed the Standard Form 2809 to OWCP on January 21, 2014 and noted that she was requesting reinstatement of the same HBI plan she had when her compensation benefits were terminated in 2010. Appellant noted that she previously had the standard federal plan with BCBS.

In a January 28, 2014 letter, an OWCP district director responded to appellant's January 9, 2014 letter. She indicated that appellant's wage-loss compensation was terminated effective March 14, 2010, but was later reinstated per the Board's June 6, 2012 decision. The district director acknowledged that appellant's HBI coverage was not reinstated at the same time as her wage-loss compensation due to an oversight. She advised that BCBS confirmed that appellant had not used her HBI coverage during the period March 14, 2010 to April 16, 2013 and, therefore,

OWCP reimbursed appellant for the HBI premiums that were deducted from her compensation payments during that period by issuing her a \$6,830.63 check on December 20, 2013. The district director noted that, because appellant had not been using the HBI coverage, she had the option of reinstating her HBI coverage retroactive to April 17, 2013, or requesting a reimbursement of the HBI deductions for the period April 17, 2013 to the present.

On January 30, 2014 OWCP received the completed Standard Form 2809 in which appellant elected to have HBI coverage with the Federal Employees Health Benefits (FEHB) Program under BCBS (code 104) effective January 12, 2014. A portion of the form was completed by an OWCP official as OWCP was designated as the entity administering the coverage. Also on January 30, 2014 OWCP issued appellant a \$1,656.84 check in order to reimburse her for the HBI premiums for BCBS health insurance that were deducted from her compensation payments during the period April 17, 2013 to January 11, 2014. In payment records for this transaction, it noted that, for the period April 17, 2013 to January 11, 2014, she had HBI premium deductions (code 104 for the BCBS plan) taken from her wage-loss compensation despite not having access to HBI coverage. Therefore, appellant was entitled to reimbursement for HBI premium deductions for this period. It was noted that she chose to have coverage under BCBS (code 104) retroactively effective January 12, 2014.

In a February 4, 2014 letter, appellant advised OWCP that her HBI coverage still had not been restarted even though she submitted a Standard Form 2809 making an election of FEHB coverage.

In a May 21, 2015 letter, OWCP advised appellant that she had been reimbursed the HBI benefits for the appropriate period. It noted that her HBI enrollment had been transferred back to her former employing establishment, U.S. Courts, Office of the Public Defender, and advised her that, if any HBI deductions for BCBS were made from February 9, 2014 to the present, then she had to address the issue with her former employing establishment.

On July 9, 2015 OWCP received a FECA Health Benefits Transmittal Sheet which was signed by an OWCP health benefits technician on July 9, 2015. The portion of the form to be completed by an OWCP claims examiner (Part A) contained the name of a claims examiner, but no signature of that claims examiner. In Part A of the form, the HBI code was listed as 104 and the "Transfer Effective Date" for HBI coverage was listed as February 9, 2014. OWCP also received a Notice of Change in Health Benefits Enrollment (Standard Form 2810) which was signed by an OWCP official on July 9, 2015, it was noted that OWCP had accepted transfer of appellant's HBI enrollment with BCBS under code 104.

OWCP had also been developing the medical evidence as to whether appellant continued to be disabled from all work. On January 28, 2014 it terminated appellant's wage-loss compensation effective February 9, 2014.

Appellant appealed OWCP's January 28, 2014 decision to the Board. By decision dated May 5, 2015,⁵ the Board reversed OWCP's January 28, 2014 termination of her wage-loss

⁵ Docket No. 14-1302 (issued May 5, 2015). Appellant also appealed from OWCP's December 19, 2013 decision denying her request for authorization for left knee surgery, which the Board affirmed.

compensation effective February 9, 2014. The Board found that the medical evidence of record was insufficient to justify OWCP's termination action.

Following the Board's reversal of the February 9, 2014 termination of appellant's wage-loss compensation, OWCP made a payment to her on July 10, 2015 which reinstated her total wage-loss compensation effective February 9, 2014. The amount of reinstated wage-loss compensation beginning February 9, 2014 was reduced by periodic deductions for HBI premiums under code 104.⁶

On August 13, 2015 appellant received a Standard Form 2809 which she completed on May 15, 2006 in order to elect HBI coverage with BCBS under code 104. The portion of the form to be completed by the relevant employing establishment was initially completed on May 16, 2006 by an official of her former employing establishment, U.S. Courts, Office of the Federal Public Defender. However, an unidentified individual had struck out the "Effective date of action" which had been listed as May 16, 2006 and replaced it with the date February 9, 2014. The document was submitted in response to a July 9, 2015 letter in which OWCP asked the former employing establishment to submit any HBI enrollment forms completed by appellant that it had in its possession. OWCP advised the former employing establishment that it was deducting HBI premiums from her continuing wage-loss compensation payments and that OWCP would "now be the employing office for health insurance purposes."

In an October 8, 2015 letter, appellant asserted that she should be refunded for the HBI premium deductions for the period February 9, 2014 to May 4, 2015 because her HBI coverage had been terminated for that period.

In a December 31, 2015 letter, OWCP advised appellant that HBI premium deductions for the period February 9 to May 4, 2015 were correct and were done in accordance with her Standard Form 2809 signed on January 12, 2014 and her January 23, 2014 letter requesting reinstatement of HBI coverage. It noted that the evidence of record showed that HBI premium refunds issued to her were proper and complete and that there was no pending HBI premium refund. OWCP informed appellant that if she had evidence showing that she was due an HBI premium refund from OWCP, rather than from her employing establishment, she should submit the evidence within 30 days. It afforded her 30 days to submit the requested information.

By decision dated February 4, 2016, OWCP determined that appellant was not entitled to reimbursement of HBI premiums for the period February 9, 2014 through May 4, 2015. It noted that, when her FECA benefits were terminated, a transfer of her HBI enrollment package was made to her employing establishment. OWCP indicated that, in order for appellant to keep her HBI coverage, regardless of whether she was receiving FECA or Office of Personnel Management (OPM) benefits, she was required to pay premiums for HBI. It noted that there was no evidence explaining why she was entitled to any HBI reimbursement from OWCP for the period February 9, 2014 to May 4, 2015. OWCP indicated that it advised appellant that all reimbursements regarding HBI premiums had been processed. It noted that, in a December 31, 2015 letter, it informed her

⁶ On July 10, 2015 OWCP paid appellant \$52,565.75 in wage-loss compensation for the period February 9, 2014 to June 27, 2015 through an EFT. Before arriving at this amount, OWCP deducted \$3,200.04 for HBI coverage under code 104.

that she had 30 days to submit additional evidence regarding the matter. OWCP indicated that no new evidence had been submitted by appellant and that, to date, sufficient evidence had not been received to establish that she was entitled to a reimbursement of HBI premiums for the period February 9, 2014 to May 4, 2015 from OWCP.

Appellant appealed OWCP's February 4, 2016 decision to the Board and, by decision dated October 6, 2017,⁷ the Board set aside the February 4, 2016 decision and remanded the case to OWCP for further development. The Board explained that, in its February 4, 2016 decision, and prior communications to her, OWCP suggested that her former employing establishment, U.S. Courts, Office of the Federal Public Defender, was the only entity responsible for reimbursing her HBI premiums for the period beginning February 9, 2014. The Board noted that appellant was terminated from her former employing establishment on May 22, 2007 and that OWCP did not provide support for its suggestion that her former employing establishment was responsible for reimbursing her HBI premiums for the claimed period. The Board further noted that OWCP did not cite to relevant statutes, procedures, regulations, or Board precedent to support its determination. The Board also noted that OWCP had failed to articulate a reason for not reimbursing HBI premiums for the period February 9, 2014 to May 4, 2015 (the second period appellant's benefits had been terminated and during which the termination was reversed by the Board) for the same reason that it previously reimbursed her for HBI premiums deducted for the previous period of termination (March 14, 2010 to January 11, 2014), which was reversed by the Board.

The Board remanded the case to OWCP for further development.

By decision dated April 12, 2018, OWCP denied appellant's claim for reimbursement of HBI premiums for the period February 9, 2014 to May 4, 2015. It found that she failed to provide evidence that she was unable to use her health benefits plan during the period claimed. OWCP noted that appellant acknowledged receiving an explanation of benefits statements from BCBS, but did not submit them to OWCP. Moreover, it was unknown whether the explanation of benefits statements were for denial of benefits or were intended to advise her about the reduction of fees for services rendered. OWCP observed that a medical report for service on March 13, 2014 was received on April 23, 2014, which was during the period in question. It indicated that appellant might wish to submit a statement from BCBS regarding whether her plan was utilized during the period for which she was claiming reimbursement.

LEGAL PRECEDENT

An employee entitled to disability compensation may continue his or her health benefits under the FEHB Program. The regulations of OPM, which administers the FEHB Program, provide guidelines for the registration, enrollment, and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a) provides that employees and annuitants are responsible for paying the enrollee share of the cost of enrollment for every pay period during which they are enrolled. An employee or annuitant incurs a debt to the United States in the amount of the proper employee or annuitant withholding required for each pay period during which they

⁷ See *supra* note 2.

are enrolled if the appropriate health benefits withholdings or direct premium payments are not made.⁸

ANALYSIS

The Board finds that the case is not in posture for decision.

By decision dated October 6, 2017, the Board remanded the case to OWCP for further development, including the issuance of a decision that contains adequate facts and findings regarding appellant's claim for reimbursement of HBI premiums for the period February 9, 2014 to May 4, 2015. By its decision dated April 12, 2018, OWCP denied her claim for reimbursement of HBI premiums for the period February 9, 2014 to May 4, 2015. However, it again failed to adequately explain the basis for its denial.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulations to make findings of fact.⁹ OWCP procedures further specify that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."¹⁰ These requirements are supported by Board precedent.¹¹

In its October 6, 2017 decision, the Board explained that, in its February 4, 2016 decision, and prior communications to appellant, OWCP suggested that her former employing establishment, U.S. Courts, Office of the Federal Public Defender, was the only entity responsible for reimbursing her HBI premiums for the period beginning February 9, 2014. The Board indicated that she was terminated from her former employing establishment on May 22, 2007 and that OWCP did not provide support for its suggestion that her former employing establishment was responsible for reimbursing her HBI premiums for the claimed period. The Board further noted that OWCP did not cite to relevant statutes, procedures, regulations, or Board precedent to support its position. The Board also indicated that OWCP failed to articulate a reason for not reimbursing HBI premiums for the period February 9, 2014 to May 4, 2015 (the second period appellant's benefits had been terminated and during which the termination was reversed by the Board) for the same reason that it previously reimbursed her for HBI premiums deducted for the previous period of termination (March 14, 2010 to January 11, 2014), which was reversed by the Board.

As noted, the Board's October 6, 2017 decision remanded the case to OWCP to resolve these above-noted unaddressed concerns. On remand, OWCP issued an April 12, 2018 decision

⁸ 5 C.F.R. § 890.502(a).

⁹ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

¹¹ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

denying appellant's claim for reimbursement of HBI premium deductions, but the decision does not address the specific matters of concern denoted by the Board in its October 6, 2017 decision. In essence, OWCP's April 12, 2018 decision does not contain a significantly greater explanation of the denial of her claim than did the February 4, 2016 decision which the Board previously found to be inadequate. OWCP again failed to cite to relevant statutes, procedures, regulations, or Board precedent to support its decision.

For these reasons, OWCP's February 4, 2016 decision denying reimbursement of HBI premium deductions for the period February 9, 2014 to May 4, 2015 would not allow appellant to understand the reason for the disallowance and the evidence necessary to overcome the defect of her claim. Therefore, the case shall be remanded to OWCP for further consideration of this matter, to be followed by the issuance of a *de novo* decision containing adequate facts and findings.¹²

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: November 26, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² See *supra* note 10.