



## **FACTUAL HISTORY**

On April 10, 1989 appellant, then a 37-year-old air traffic controller, filed a Form CA-2, occupational disease claim, alleging that work-related circumstances involving an August 1986 airplane crash caused an emotional condition. She had stopped work on February 13, 1989. After an initial denial on July 31, 1989 and a decision denying merit review on May 24, 1990, by decision dated July 9, 1991, the Office accepted that appellant sustained employment-related post-traumatic stress disorder. Appellant, who had retired under disability effective May 25, 1989, opted benefits under the Federal Employees' Compensation Act<sup>1</sup> and was placed on the periodic rolls. She participated in the Federal Employees' Health Benefits Program (FEHB) and through the years submitted a number of forms changing her enrollment plans.

By letter dated January 5, 2004, appellant stated that she wanted to change her health coverage from self and family to self only and attached a health benefits election form dated November 12, 2003 indicating that she wished to change from Mail Handlers code 452 to Mail Handlers code 451, high self coverage. A computer-generated FEHB enrollment form indicates that appellant's enrollment was changed from code 451 to 455 effective April 18, 2004. Office computer print-outs contained in the record show that appellant's FEHB deductions for the period April 18, 2004 to September 2, 2006 were under the 455 code, standard family coverage and that no FEHB deductions were made for the period September 3, 2006 to August 25, 2007.

An Office memorandum dated August 1, 2007 provides that appellant changed from family coverage, code 452, to single coverage, 451, but noted that an Office form erroneously changed the single coverage, 451, to family coverage, 455, effective April 18, 2004. The memorandum also noted that appellant's health benefits were suspended effective September 3, 2006 for failure to pay Mail Handlers union dues but that these were reinstated effective September 18, 2006 under code 451.

On October 18, 2007 the Office issued a preliminary finding that an overpayment in compensation in the amount of \$6,793.94 had been created. It explained that the overpayment resulted because the Office failed to make proper deduction for FEHB premiums for code 451 for the period April 18, 2004 to August 4, 2007.<sup>2</sup> Appellant was found to be without fault and was provided an overpayment questionnaire and given instruction on appropriate responses to the preliminary finding. She was given 30 days to respond.<sup>3</sup> On November 29, 2007 the Office finalized the overpayment decision. It found that appellant was not at fault in the creation of the overpayment but noted that she had not responded to the preliminary overpayment finding and thus was not entitled to waiver. The Office ordered repayment by deduction \$486.00 every four weeks from her continuing compensation.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> The Office specifically stated that the correct deductions under code 451 for the period April 18, 2004 to August 4, 2007 totaled \$12,329.42 whereas the deductions that had been made under code 455 for the period April 18, 2004 to September 2, 2006 totaled \$5,534.48, yielding an overpayment in compensation of \$6,793.94. The Office noted that no health insurance deductions were made for the period September 3, 2006 to August 4, 2007.

<sup>3</sup> On May 1, 2004 appellant was paid a refund of \$3,249.85 because incorrect health benefit premiums were deducted for the period July 16, 1998 to April 14, 2004.

## LEGAL PRECEDENT -- ISSUE 1

The Office of Personnel Management (OPM), rather than the Office, has jurisdiction over the matter of health insurance deductions from compensation and over enrollment under the FEHB.<sup>4</sup> OPM regulations provide guidelines for the registration, enrollment and continuation of enrollment for federal employees. In this connection, section 890.502(a)(1) provides that an employee or annuitant is responsible for payment of the employee's share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due to the United States in the amount of the proper employee withholding required for that pay period.<sup>5</sup> In addition, section 890.502(c)(1) 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 of the United States Code, to OPM for deposit in the Employees Health Benefits Fund.<sup>6</sup> When the Office deducts less than the proper health benefit premium for the coverage selected, an overpayment in compensation is created.<sup>7</sup> The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment in compensation because the Office must pay the full premium to OPM when the error is discovered.<sup>8</sup>

## ANALYSIS -- ISSUE 1

The record in this case supports that, for the period April 18, 2004 to March 19, 2005, the Office deducted health benefit premiums based on code 455 for standard family coverage rather than code 451 for high self coverage, as had been selected by appellant on an FEHB enrollment form dated November 12, 2003. It was obligated to deduct appropriate health benefit premiums for code 451.<sup>9</sup> An overpayment worksheet documented that the correct deductions under code 451 for the period April 18, 2004 to August 4, 2007 totaled \$12,329.42 whereas the deductions that had been made under code 455 for the period April 18, 2004 to September 2, 2006 totaled \$5,534.48 and that no health insurance deductions were made for the period September 3, 2006 to August 4, 2007. This yielded an overpayment in compensation of \$6,793.94. The Board finds that, because deductions were made under the incorrect health benefit enrollment code for the period April 18, 2004 to September 2, 2006 and no health benefit deduction was made for the period September 3, 2006 to August 4, 2007, an overpayment in compensation in the amount of \$6,793.94 was created.

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<sup>4</sup> *Raymond C. Beyer*, 50 ECAB 164 (1998).

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

<sup>6</sup> 5 U.S.C. § 8906; 5 C.F.R. § 890.502(c)(1).

<sup>7</sup> *See John Skarbek*, 53 ECAB 630 (2002).

<sup>8</sup> *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>9</sup> 5 U.S.C. §§ 890.502(a)(1), 890.502(c)(1).

## LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”<sup>10</sup> Section 10.438 of Office regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery on an overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>11</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>12</sup>

## ANALYSIS -- ISSUE 2

As the Office found appellant without fault in the creation of the overpayment in compensation, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>13</sup> Appellant, however, had the responsibility to provide financial information to the Office.<sup>14</sup>

In its preliminary determination dated October 18, 2007, the Office clearly explained the importance of providing the requested financial information and advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Within the required 30-day period, appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting her income and expenses. As a result, the Office did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of the Act or if recovery would be against equity and good conscience. Consequently, as appellant did not submit the financial information required under section 10.438 of Office regulations, which was necessary to determine her eligibility for

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<sup>10</sup> 5 U.S.C. § 8129.

<sup>11</sup> Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. *Id.* at § 10.437.

<sup>12</sup> 20 C.F.R. § 10.438.

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *Supra* note 12.

waiver, the Office properly denied waiver of recovery of the overpayment in compensation in the amount of \$6,793.64.<sup>15</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The Office's implementing regulation provides that, if an overpayment of compensation has been made to an individual entitled to further payments and no refund is made, it shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.<sup>16</sup>

### **ANALYSIS -- ISSUE 3**

As stated earlier, appellant did not submit an overpayment recovery questionnaire or other financial information that the Office requested prior to the final November 29, 2007 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.<sup>17</sup> When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>18</sup> As appellant did not submit any financial information to the Office as requested, the Board finds that there is no evidence in the record to show that a recovery rate of \$486.00 every 28 days was unreasonable. She has not shown that the Office improperly required withholding \$486.00 from her continuing compensation payments every 28 days.<sup>19</sup>

### **CONCLUSION**

The Board finds that an overpayment of \$6,793.94 occurred because the Office neglected to deduct proper health insurance premiums from appellant's continuing compensation. The Board further finds that the Office properly denied waiver of the overpayment and did not abuse its discretion in setting the rate of recovery at \$460.00 each compensation period.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 10.441(a).

<sup>17</sup> *Supra* note 12.

<sup>18</sup> *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).

<sup>19</sup> The Board notes that on appeal appellant stated that she was hospitalized in October 2007. The case record forwarded to the Board does not contain evidence to support this contention but does indicate that appellant was hospitalized in October 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2007 be affirmed.

Issued: August 18, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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