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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Russell C. Watson and Thomas E. Lewis

File: B-253514

Date: November 19, 1993

DIGEST

Two federal employees who were covered by their spouses' private employers' health insurance "voluntarily" applied for new positions and transferred to new duty stations. Upon relocation, the spouses lost their employers' coverage. At the times of the transfers (September 1991 and April 1992), the employees were advised by the agency that they were not entitled to enroll in the Federal Employees Health Benefits Program (FEHBP) until the next open season enrollment period because their reassignments were not "directed" by the agency as then required by 5 C.F.R. § 809.301(x) (1992). The employees therefore paid premiums to retain private health insurance coverage during the period prior to their eligibility to apply for FEHBP coverage. Their claims for reimbursement of such premiums under the miscellaneous expense allowance provisions of the Federal Travel Regulation may not be paid.

DECISION

This decision is in response to a request for an advance decision[1] as to the eligibility of two employees of the Fish and Wildlife Service, Department of the Interior, Russell C. Watson and Thomas W. Lewis, to obtain health insurance coverage under the Federal Employees Health Benefits Program (FEHBP), in connection with their permanent changes of official stations. If the employees were entitled to obtain such coverage, but through administrative error, were informed that they were not entitled thereto and paid for private coverage, the certifying officer asks whether they may be reimbursed for such costs as a miscellaneous expense.

BACKGROUND

Mr. Watson transferred in September 1991, and Mr. Lewis transferred in April 1992. Both transfers were voluntary on the employee's part.

[1]The request was submitted by Ms. Edna D. Romero, Authorized Certifying Officer, Fish and Wildlife Service.

Prior to their transfers, the health insurance coverage for both employees' families was carried through plans provided by the employers of their respective spouses which was discontinued due to their relocations. The employees were advised by agency regional office finance and personnel officials that they were not entitled to obtain health insurance coverage through the FEHBP until the next open season on such coverage, which occurred several months after their moves. They were, therefore, encouraged to maintain their existing coverage at their personal expense and that they could claim reimbursement for the cost of such coverage as a part of their relocation expenses. The regional office officials advice to the employees that they were not immediately eligible for FEHBP coverage was based on the fact that their voluntary application for a position and transfer did not constitute a "directed assignment," the only basis upon which immediate coverage could be elected under applicable Office of Personnel Management (OPM) regulations, then in effect, in these employees' situation.

Interior headquarters finance officials, however, state that they consider all agency-paid moves as being "directed," even though an employee usually transfers in connection with the acceptance of a job he or she has applied for. They state that based on their interpretation of the regulations, 5 C.F.R. § 890.301, and the language contained in the FEHBP Standard Form 2809, block 19, which allows enrollment into a FEHBP plan within 31 days before or after the transfer when an employee loses coverage under a spouse's non-federal health plan), the two employees in this case did meet the criteria allowing a change in enrollment due to reassignment out of the commuting area. Since the headquarters finance officials view the employees as having been eligible for immediate enrollment under FEHBP, they disallowed the employees' claims for reimbursement of their private health insurance premiums which the employees claimed as an expense of their permanent changes of official station.

The regional office officials request further consideration of the disallowance on the basis that if the employees were eligible for immediate FEHBP enrollment, they were denied enrollment as a result of administrative error, and they should be reimbursed on that basis.

ANALYSIS

At the time of the employees' transfers, Mr. Watson, in September 1991, and Mr. Lewis, in April 1992, the applicable

OPM regulation, 5 C.F.R. § 890.301(x)(1) (1992),[2] provided that:

> "An employee whose reassignment is directed out of the commuting area and who loses coverage under a spouse's non-Federal enrollment because the non-federally employed spouse terminates his/her employment to accompany the Federal employee, may register to enroll [in the FEHBP] within the period beginning 31 days before the date he/she leaves employment in the old commuting area and ending 31 days after entry on duty at the place of employment in the new commuting area." (Emphasis supplied.)

Thus, at the time of the transfers in question (September 1991 and April 1992), the regulation required that an employee's reassignment out of the commuting area be "directed" by the agency in order for the employee to be immediately eligible to register to enroll in the FEHBP. OPM provided further guidance in this regard in the Federal Personnel Manual, Supp. 890-1, Subchapt. S7 (Mar. 10, 1989), clearly stating that employees who voluntarily transfer out of the commuting area may not enroll under this provision; the transfer must be the result of a directed reassignment.[3]

Therefore, the advice the agency regional officials gave Messrs. Watson and Lewis at the times of their transfers, that they were not entitled to immediately enroll in the FEHBP inasmuch as their transfers out of their respective

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[2]Pursuant to 5 U.S.C. § 8913, OPM is authorized to prescribe regulations to carry out the FEHBP, including prescribing the time at which and the manner and conditions under which an employee is eligible to enroll.

[3]OPM later amended the regulations to extend the opportunity for enrollment to federal employees who move to a different commuting area to accept any federal position, including moves due to promotions, voluntary reassignments, and lateral job transfers. However, the amended regulations did not become effective until June 18, 1992, subsequent to the transfers of Messrs. Watson and Lewis in September 1991 and April 1992, respectively. See Fed. Reg., Vol. 56, No. 59, p. 12676, Mar. 27, 1991; and Fed. Reg., Vol. 57, No. 97, p. 21189, May 19, 1992. See also 5 C.F.R. § 890.301(x)(1) (1993).

commuting areas were voluntary, at that time was correct and did not involve administrative error.[4]

The remaining question then is whether the two employees may be reimbursed under the miscellaneous expenses allowance provisions of the Federal Travel Regulation (FTR), 41 C.F.R. Part 302-3 (1992) for the premiums paid to continue their private health insurance coverage during the period prior to their eligibility for FEHBP coverage.

The miscellaneous expense allowance is authorized to defray various contingent costs associated with discontinuing residence at one location and establishing it at a new location. FTR § 302-3.1(a). While the regulation includes, as reimbursable, forfeiture losses on medical and dental contracts that are not transferrable (§ 302-3.1(b)(4)), the cost of health insurance premiums to maintain coverage is not a forfeiture on a prepaid contract. Although the regulations do not specifically exclude health insurance premiums, we have held that expenses relating generally to medical arrangements of transferred employees are not reimbursable.[5]

In accord with these authorities, we do not view the premiums the employees paid to continue private health insurance until they could obtain coverage under the FEHBP as the type of costs meant to be reimbursed under the miscellaneous expense allowance. While it is unfortunate that these employees had to incur these costs, we note that they apparently originally elected to be covered by their spouses' insurance as preferable to the coverage provided under the FEHBP. Thus, these extra costs they incurred upon relocation were an incident of that election made for personal reasons.

Accordingly, Messrs. Watson and Lewis may not be reimbursed the costs they claim of private health insurance coverage.

James F. Hinchman
General Counsel

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[4]We note that even had the employees been denied the opportunity to enroll due to administrative error, that would not provide a basis to reimburse them for their private insurance premiums. See Deborah M. West, B-238509, Apr. 9, 1990; and Joyce A. Doyle, B-234866, Nov. 17, 1989.

[5]See Donald W. Haley, B-210572, July 26, 1983.