



Office of the General Counsel

B-244575

December 11, 1991

Joseph C. Neiberger
Chief, Financial Controls Branch
Consolidated American Payroll Division
U.S. Department of State
P.O. Box 9315
Arlington, Virginia 22209

Dear Mr. Neiberger:

This is in reference to the debt of Mr. [redacted] for unpaid health insurance premiums totalling \$780.82 during the period July 16, 1987, to July 16, 1988, the date his health insurance enrollment was terminated.

Mr. [redacted] has appealed our Claims Group Settlement Certificate denying his request for waiver of this debt under 5 U.S.C. § 5584 (1988).¹ As you advised us, his debt arose while he was in a nonpay status from July 16, 1987, to July 23, 1989. Under 5 C.F.R. § 890.502(b), he was responsible for payment of his share of premiums for every pay period that his health insurance enrollment continued, i.e., July 16, 1987, to July 16, 1988.

The record shows that before Mr. [redacted] went on leave without pay in July 1987, he was advised about the possibility of maintaining health insurance coverage for his family and himself under the Federal Employees Health Benefits Plan (FEHBP), 5 U.S.C. Chapter 89 (1988). However, he instructed the personnel specialist that he did not wish to do so and that he wanted to cancel his enrollment immediately. Despite Mr. [redacted]'s clear instructions, the personnel specialist neglected to have Mr. [redacted] sign Standard Form 2809, which would have canceled his enrollment, while Mr. [redacted] was signing various other documents before going on leave without pay. As stated by Mr. [redacted]'s current servicing personnel office: "[d]ue to Administrative Error in the previous bureau Mr. [redacted]'s health insurance coverage was not terminated."

¹Z-2905941, April 22, 1991.

After Mr. [redacted]'s return to work in July 1988, following the leave-without-pay period, the Department of State notified him that he was in debt for the unpaid health insurance premiums. The Department also erroneously treated Mr. [redacted] as still enrolled in the FEHBP and erroneously deducted \$280 from Mr. [redacted]'s compensation for health insurance premiums in 1989 for which he seeks a refund.

In referring the waiver request to our Office by letter of November 26, 1990, you advised us that Mr. [redacted] believed that his election to cancel his health insurance had been implemented and that he had personally paid his family's medical expenses during this period. Accordingly, since there was no indication of fraud, misrepresentation, fault, or lack of good faith, you recommended that Mr. [redacted]'s request for waiver be granted.

However, as our Claims Group correctly stated in its settlement certificate, our waiver authority is limited to those claims which arise from erroneous payments. Since Mr. [redacted] was in a nonpay status, there were no erroneous payments to him during that time, and his debt may not be considered for waiver under 5 U.S.C. § 5584.

There is, however, an alternative remedy. Under 5 C.F.R. § 890.103(b) (1991), the Office of Personnel Management (OPM) is authorized to retroactively correct administrative errors "upon a showing satisfactory to OPM that it would be against equity and good conscience not to do so."

Accordingly, we recommend that you submit the matter of Mr. [redacted]'s indebtedness of \$780.82 for health benefits premiums to the Office of Insurance Programs, OPM, for appropriate action under the above-cited regulation.

Finally, there is the remaining matter of Mr. [redacted]'s claim for a refund of the \$280 erroneously deducted from his pay for health insurance premiums after he returned to a pay status in July 1989. Mr. [redacted]'s health insurance enrollment in the FEHBP was legally terminated under 5 C.F.R. § 890.304(a)(5) (1991) on July 16, 1988, because Mr. [redacted] was in a leave-without-pay status for over 365 days. Thus, since Mr. [redacted]'s enrollment in the FEHBP had terminated and he did not reinstate his enrollment, the Department of State had no legal basis to deduct \$280 in premiums from Mr. [redacted]'s compensation. Thus, the Department of State should refund that amount to Mr. [redacted].

If you have any questions on the foregoing, please call
Mr. Joseph L. McCann of this Office at .

Sincerely yours,

Jr *Seymour Ego*
James F. Hinchman
General Counsel

cc: Director, Claims Group
David Lewis, OPM