



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Scott C. Thompson - Waiver - Nondeduction  
of Health Insurance Premiums

**File:** B-256828

**Date:** August 2, 1994

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### DIGEST

Waiver of an employee's debt is denied where the employee was aware that he was being overpaid when he received salary payments over a 7-year period from which the agency failed to deduct premiums for his health insurance coverage. Although the employee states that he promptly notified the agency's personnel office of the errors several times during the first 10 months, he apparently pursued the matter no further, allowing the overpayments to continue for another 6 years. When an employee is aware of receiving overpayments the employee cannot reasonably expect to retain them, but should set them aside for refund while he pursues the matter with the agency to have the error corrected.

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### DECISION

Mr. Scott C. Thompson, an employee of the National Labor Relations Board (NLRB), has appealed our Claims Group's settlement which denied his request for waiver of a debt resulting from the NLRB's failure to deduct from his salary his health insurance premiums. For the reasons discussed below we sustain the Claims Group's denial.

### BACKGROUND

When Mr. Thompson transferred from the Department of Labor to the NLRB effective January 13, 1985, he transferred his coverage under a health benefit plan. The Department of Labor had been deducting the premiums from his salary each pay period for this coverage, as required under the plan, but upon his transfer, the NLRB failed to continue to deduct premiums from his salary for this coverage. Mr. Thompson states that in examining his pay stubs shortly after his transfer, he noticed that his annual leave was incorrectly recorded and that no deductions were being made for his

health insurance premiums. He states that by June 1985 he had discussed these matters with NLRB personnel office representatives several times and was assured that the problems would soon be corrected. When they were not corrected, he states that he had several more discussions with NLRB personnel, and in November 1985 the NLRB began deducting the premiums. He indicates that although he had been told by an NLRB official that double deductions would be made to cover current premiums and the ones that had not been deducted, only single deductions were being made. He indicates he brought this to the agency official's attention and was told not to worry, that the double deductions would begin. However, only single deductions, with one exception, were effected from November 1985 through June 1986.

The NLRB inexplicably ceased making the premium deductions at the end of June 1986. Mr. Thompson states that he then called an official in the agency's personnel office and told her, and she said she would check into it. However, no further deductions were taken from his pay for health insurance for the next 6 years, until the NLRB discovered the error in June 1992. Although Mr. Thompson's efforts in 1985 apparently led to the agency's initiating deductions in November 1985, after the deductions ceased in June 1986, with the exception of the call he states he made at that time, he apparently made no further efforts over the next 6 years to have the matter corrected. It is clear that during this entire time he continued to receive the benefits of coverage under the plan, using his insurance on many occasions, without paying the premiums he knew were required of him for such coverage.

In August 1992, the NLRB notified Mr. Thompson, in writing that he was in debt in the amount of \$4,783.20<sup>2</sup> due to the

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<sup>2</sup>Mr. Thompson notes the difference between the amount of the debt (\$4,783.20) stated by the NLRB and the "gross amount of \$5,249.95" of the debt stated by our Claims Group. The difference apparently is due to the Claims Group's use of the gross amount of all the premiums for Mr. Thompson's insurance from the time he transferred to the NLRB in 1985 to the time in June 1992 when the deduction error was corrected. The NLRB, however, used a net amount that takes account of the limited deductions that occurred between November 1985 and June 1986, but it erroneously concluded that it was barred from collecting the amount which had been outstanding more than 6 years when, in fact, it has authority to collect by administrative offset such debts which have been outstanding up to 10 years. See 5 U.S.C. § 5514, 31 U.S.C. § 3716, and 5 C.F.R. § 550.1106. The NLRB should establish the correct amount based on all premiums that were unpaid from the time Mr. Thompson transferred to

NLRB's failure over the years to properly collect the health insurance premiums from him. In November 1992 Mr. Thompson submitted a detailed statement concerning the matter and requested waiver of the debt. On February 4, 1993, the NLRB transmitted Mr. Thompson's request for waiver to our Claims Group with a report recommending that waiver be granted. The report stated that they had reviewed the circumstances, including the fact that Mr. Thompson had notified the agency in 1985 and 1986 of the deduction errors, although they were unable to contact some of the employees he stated he spoke to because they are no longer with the agency, and others who are still with the agency have only vague memories of the matter. However, the agency states it found no evidence of fraud, misrepresentation, fault, or lack of good faith on Mr. Thompson's part. In July 1993 our Claims Group denied waiver because even though the employee initially informed the agency of payroll errors, since he was aware of receiving erroneous overpayments, he should be prepared to make provisions for repayment.

Mr. Thompson disagrees with our Claims Group and seeks reconsideration.

#### OPINION

The waiver statute, 5 U.S.C. § 5584 (1988), allows us to waive an employee's debt if its collection would be against equity and good conscience and not in the best interests of the United States, and provided there exists no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

The standards implementing the waiver statute at 4 C.F.R. § 91.5(b) state:

"Generally, waiver is precluded when an employee . . . receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials."

Mr. Thompson argues that all the criteria are met in his case, stating that he did not engage in, nor does anyone allege, any fraud, fault or misrepresentation on his part and that he acted at all times in good faith. He notes that over a 10-month period in 1985-1986 he "hounded" the agency over the matter, and thus he satisfied the requirement to notify the agency of the error.

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the NLRB in 1985.

From the record before us, it appears that the initial failure in 1985-1986 to begin deduction of premiums and to continue deductions once started was due to administrative error on the part of the NLRB and not due to fraud, misrepresentation, fault or lack of good faith on Mr. Thompson's part. However, from the record, it is clear that Mr. Thompson knew he was not entitled to health insurance without paying the premiums and that the premiums were not being deducted from his pay as required under the program.

As indicated by the Claims Group's settlement, if an employee is aware of receiving erroneous overpayments, he not only has a responsibility to notify responsible agency officials, but he should set the erroneous amounts aside and be prepared to make repayment upon correction of the error; the employee cannot reasonably expect to retain the overpayments. Charles R. Ryon, Sr., B-234731, June 19, 1989; Hawley E. Thomas, B-227322, Sept. 19, 1988. In such circumstances, collection of the overpayments is not considered to be against equity, good conscience, or the best interests of the United States.

Mr. Thompson seeks to distinguish his situation from the situation in Ryon, supra, on the basis that the overpayments in each pay period in that case were duplicate paychecks of which accumulated to a large debt in a relatively short period of time, whereas the overpayments in his case were smaller amounts (ranging from about \$16 to \$40 per pay period). That difference is irrelevant here where Mr. Thompson clearly knew he was receiving overpayments. The situation in Thomas, supra, is very similar to Mr. Thompson's situation in that smaller overpayments of approximately \$30 each pay period in that case accumulated to a substantial amount over a relatively long period of time - more than two years. In both cited cases the employee did bring the matter to the attention of the appropriate official, but waiver was denied because the employee knew about the overpayments and had an obligation to refund them.

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<sup>3</sup> See 5 U.S.C. § 8906, and implementing regulations in 5 C.F.R. § 890.502(b)(1), requiring contributions from the employee for participation in the Federal Employees Health Benefits Program which contributions are to be withheld from the employee's pay, and stating that the employee incurs an indebtedness to the United States for the amount of premiums not withheld. The Standard Form 2809 Mr. Thompson signed in August 1984 when he elected to participate in the program specifically provided for deductions from his salary to cover his share of the cost of such participation.

Mr. Thompson apparently made good faith efforts in 1985 to bring the matter to the agency's attention for correction, and those efforts apparently led to the initiation of the deductions in November 1985 which continued to June 1986. However, clearly he knew that deductions had not been made from January to June 1985 which he would be required to pay upon correction of the error. In addition, however, concerning the nondeductions which began in June 1986 and continued through June 1992, we do not believe that Mr. Thompson's obligation to have the error corrected was satisfied by the oral contacts he states he made with NLRB personnel office representatives concerning the initial problems in 1985, nor the single call he said he made after the deductions stopped again in June 1986. Although the errors originated with the agency, he had the obligation to pursue the matter further, in writing and to a higher level if necessary, to have it corrected. This he did not do. Therefore, we cannot find him free from at least partial fault in allowing the error to continue for an additional 6 years during which he was covered by and made use of the insurance. Compare John J. Williams, B-251667, Apr. 2, 1993.

Accordingly, the denial of Mr. Thompson's request for waiver is sustained.

/s/ Seymour Efros  
for Robert P. Murphy  
Acting General Counsel

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Mr. Thompson complains that due to the agency's error, he is now indebted for a large sum which is a burden for him to repay. We note, however, that he is partially at fault for allowing the error to continue so long, and in any event, the agency has authority to collect the debt in installments.

**Date:** August 2, 1994

**To:** Director, Claims Group/OGC - Sharon S. Green

**From:** Acting General Counsel - Robert P. Murphy

**Subject:** Scott C. Thompson - Request for Waiver (B-256828)  
Z-2918341

Returned is Claims File No. Z-2918341 and a copy of decision B-256828 of today's date, affirming the Claims Group's denial of the request for waiver.

**Attachments**

## SECTION I: DISTRIBUTION AND PROCESSING INSTRUCTIONS

<b>1. B Number</b>  B-256828	<b>2. Attorney</b>  Mr. Easterwood	<b>3. Distribution Class (complete with pen and ink)</b>  <input type="checkbox"/> Unrestricted <input type="checkbox"/> Delayed <input type="checkbox"/> Limited <input type="checkbox"/> Restricted
<b>4. Publication Recommended?</b> No recommendation.		<b>6. If Delayed, this document will be available for General Distribution (complete with pen and ink)</b>  <input type="checkbox"/> Days after issuance <input type="checkbox"/> When Notified by OGC or OCH
<b>5. Special Instructions:</b>  Digest is <input type="checkbox"/> is not <input type="checkbox"/> included		

## SECTION II: INITIAL DISTRIBUTION

Mr. Scott C. Thompson 12 Poppy Court Newtown, Pennsylvania 18940	Ms. Gloria Joseph Director of Administration National Labor Relations Board 1717 Pennsylvania Ave., NW Washington, D.C. 20570
Director, Claims Group/OGC Sharon S. Green (with accompanying memorandum)	Ms. Dorothy Barrett OGC/GGD Room 7870 (2 copies)
Ms. Gail Douglas OGC/GGD Room 7870	Mr. Oliver Easterwood OGC/GGD Room 7870