

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 4, 2007

GSBCA 17009-DBT

In the Matter of ALVARO C. [REDACTED]

Alvaro C. [REDACTED], Petitioner.

Henry P. Leibowitz, Director, Human Resources Services Division, National Archives and Records Administration, College Park, MD, appearing for National Archives and Records Administration.

GOODMAN, Board Judge.

Petitioner became a full-time employee of the National Archives and Records Administration (NARA) in September 2003. From September 7, 2003, through April 16, 2005, the agency failed to withhold health insurance premiums from petitioner's bi-weekly pay. When this error was discovered by NARA, petitioner received a notice of debt in the amount of \$2162.55¹, as the agency asserted that the failure to withhold the insurance premiums was an overpayment of salary.

Petitioner requested an opportunity for a hearing concerning the existence or amount of the debt and the terms of the repayment schedule, as provided by 5 U.S.C. § 5514 (2000). On December 21, 2006, the Board received a detailed submission from NARA with a request that the Board provide the requisite opportunity for a hearing.

¹ This is the total amount of premium that the agency asserts it would have withheld for the relevant time period based upon petitioner's insurance coverage. Petitioner does not contest the accuracy of the agency's calculation.

On January 3, 2007, the Board convened a conference with petitioner, his union representative, and NARA's counsel. During that conference, petitioner acknowledged that he was covered by insurance and received the insurance benefits during the period when the agency erroneously failed to withhold his premiums. Even so, petitioner asserts that he should be relieved from the debt as the failure to withhold premiums was the fault of the Government. Petitioner waived his right to a hearing, and the parties agreed to submit this case for decision based on the representations made during the conference and the written record.

It is clear that it was not petitioner's fault that the agency failed to collect the premiums from his pay. However, fault is not a relevant factor in determining petitioner's indebtedness. Pursuant to 5 CFR 890.502(a) (2005), "[a]n employee . . . incurs an indebtedness due the United States in the amount of the proper . . . withholding required for each pay period that health benefits withholdings or direct premium payments are not made but during which the enrollment continues." As petitioner was enrolled in the insurance program during the period in which NARA failed to withhold his premiums, and does not contest the agency's calculation of the total amount of those premiums, petitioner is indebted to the United States in the amount of \$2162.55.

Petitioner has stated that repayment of the debt in a lump sum is a hardship, and has also rejected the agency's suggestion that the debt be repaid at a rate of \$28 per pay period. The agency's representative stated during the conference with the Board that the agency would be amenable to reducing the amount per pay period from that previously suggested to minimize the hardship on the petitioner. Accordingly, the agency and the petitioner should enter into a repayment schedule for partial payments until the debt is paid.



ALLAN H. GOODMAN
Board Judge