

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Dennis H. Foos,)	Date: December 14, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-08-98
)	Decision No. CR1711
Social Security Administration.)	

DECISION

On September 21, 2007, Dennis H. Foos, Petitioner, filed a request for a hearing to contest the \$21,027.96 salary overpayment debt the Social Security Administration (SSA) determined he owed. I find that Petitioner failed to meet the filing deadline and has waived his right to a hearing.

Background

Petitioner was notified of the indebtedness to SSA by letter dated June 7, 2007. Due to an administrative error, SSA overpaid Petitioner because it failed to deduct Petitioner's Federal Employees' Group Life Insurance (FEGLI) Option B (3x) premiums from his pay deductions from from July 1997 through June 2006. On June 15, 2007, Petitioner requested a waiver of the overpayment. On August 24, 2007, the Office of General Counsel issued the Agency's final decision denying Petitioner's request for a waiver of his salary overpayment. By letter dated September 21, 2007, Petitioner then requested an administrative hearing with respect to his indebtedness.

This case was received by the Departmental Appeals Board on November 9, 2007 and assigned to me for hearing pursuant to 5 U.S.C. § 5514.¹

¹ Through a written agreement with SSA, the Departmental Appeals Boards hears SSA debt collection cases of SSA employees. *See also* 45 C.F.R. § 30.2 (which defines SSA as an Operating Division of the Department of Health and Human Services (HHS) for

Findings

The process for an employee to dispute the administrative determination of the existence or the amount of a debt is set by statute. Pursuant to 5 U.S.C. § 5514, an employee is to be notified in writing and then has 15 days from the date of the notice to file a request for a hearing. *See also* 45 C.F.R. § 30.15(l) (“request [for hearing] must be postmarked no later than 15 days from the date the notice was mailed”). Pursuant to the statute and 45 C.F.R. § 30.15(l), a debtor who fails to meet the filing deadline or to request an extension waives the right to a hearing and will be immediately subject to offset of the debt from any payments to him by SSA. Petitioner was specifically advised of this by Exhibit 6 to the June 7, 2007 notice letter. That exhibit, entitled “HEARINGS,” describes the hearing process and instructs Petitioner that his request for hearing “must be postmarked no later than 15 days from the date of this letter [June 7, 2007].” Therefore, in order for Petitioner’s hearing request to be considered timely, it had to have been postmarked no later than June 22, 2007. Clearly, Petitioner failed to meet the required deadline. Therefore, he has waived his right to a hearing and I cannot hear this matter.

There is no question that Petitioner timely requested a waiver, but a waiver request and a hearing request are two separate proceedings. Also, a request for a waiver is sent to a separate office and is entirely discretionary. *See* Exhibit 5 to June 7, 2007 notice. Petitioner was clearly informed that there were two separate processes. While a debtor is not precluded from pursuing both actions simultaneously, doing so does not relieve the debtor from the mandatory filing deadlines for a hearing request. 45 C.F.R. § 30.15(p). In this instance, Petitioner chose to pursue a waiver without pursuing a hearing. Only after he received the final agency decision on August 24, 2007 denying the waiver request, did Petitioner then pursue requesting a hearing. However, his request for hearing was dated September 21, 2007. Even if I were to consider the waiver decision as providing Petitioner a right to request review, his request would still be considered untimely under the best circumstances because the filing deadline of 15 days from the August 24 decision would require that his hearing request be postmarked no later than September 10, 2007.

Finally, even if I were to consider this case on the substantive merits, I would find that there was a valid debt of \$21,027.96 which SSA can collect from Petitioner. In a hearing, the burden is on a petitioner to show that the debt is invalid or that the amount is incorrect. Petitioner here has not specifically disputed the validity of the debt. Rather, Petitioner contends that it was due to SSA’s administrative error. However, I would agree with the Agency’s August 24, 2007 decision that Petitioner knew or should have

purposes of debt collection matters) and §30.15; 20 C.F.R. § 422.317.

known of the overpayment even if it was the result of administrative error. While it is true that SSA made an administrative error, that error did not excuse Petitioner from a concurrent responsibility to review his Leave and Earning Statement (LES) each pay period to determine if the LES was correct. Clearly, Petitioner was in a position to know or he should have known that an error occurred. All federal employees receive an LES each pay period. These statements always show what items are being deducted from an employee's gross salary and in what amount. Typically, the statement would show under Deductions the following categories or types of deductions: Retirement, Medicare, Federal Tax, State Tax, Federal Employees Life Insurance (if an employee has opted for this), and Health Benefits (usually with the Insurance Carrier's Benefit Code which identifies the company and the option chosen) and the amount taken out that pay period and for the year to date for each of those categories/types. The Agency determined that a review of his LES clearly indicated that he was paying \$230 less per pay period than the price of the Option B coverage he elected. Petitioner does not dispute the validity or the accuracy of the agency's determination.

Conclusions

I conclude that Petitioner did not timely file his hearing request. Therefore, he waived his right to a hearing. In any event, even if I were to reach the merits of this case, Petitioner has not rebutted SSA's determination of an overpayment debt and the debt is valid and owed to SSA.

/s/

Alfonso J. Montano
Administrative Law Judge