U.S. Department of Labor

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Issue Date: 23 February 2006

Case No.: 2004-DCA-1

In the Matter of

ROYCE HARRIS,
Claimant

vs.

UNITED STATES DEPARTMENT OF LABOR,
OFFICE OF WORKERS'COMPENSATION PROGRAMS,
Respondent**.**

DECISION AND ORDER

Jurisdiction

This case arises from an attempt by Respondent United States Department of Labor Office of Workers' Compensation Programs to collect a debt owed it by Petitioner Royce Harris, an employee of the United States Postal Service, through the salary offset procedures authorized under the Debt Collection Act[1] (DCA) and its implementing regulations.[2] Petitioner disputed Respondent's decision to collect this debt through salary offset and requested a hearing before the Office of Administrative Law Judges (OALJ).

Background and Procedural History

The debt Respondent seeks to collect through salary offset procedures resulted from an overpayment of workers' compensation benefits to Petitioner under that Federal Employees' Compensation Act (FECA).[3] On 30 Sep 98, while delivering mail, Petitioner stepped in a hole and injured his left ankle. His subsequent claim for medical benefits

[1] 5 U.S.C. § 5514 *et seq*.
[2] 29 C.F.R.§ 20.74 *et seq*.
[3] 5 U.S.C. § 8101 *et seq*.

and wage loss compensation was accepted and he was paid total disability benefits from the date of injury. He finally returned to work on 21 Jul 99, but continued to receive total disability compensation through 24 Feb 01. He was paid more than $30,000 in compensation from 21 Jul 99 to 24 Feb 01.

In August and October of 1999, Petitioner was determined to have suffered a 10% permanent disability of his lower extremity. A letter was sent informing him of that determination and advising him that he could submit a claim for the disability, but he never did so.

On 19 Mar 01, Petitioner gave a sworn statement to a postal inspector. On 7 May 01, Respondent sent Petitioner a letter informing him it had preliminarily determined that he was overpaid in the amount of $32,808.40 and that he was not without fault in the overpayment because he either knew or should have known the payments were incorrect. The letter advised Petitioner of the various rights he could exercise before a final decision would be made. Petitioner requested a hearing, which was held on 28 Mar 02. At the hearing, Petitioner argued that he had believed the payments after his return to work were for his 10% permanent extremity disability and that he was consequently without fault in the overpayment. He stated he used the money to rebuild a home which had been flooded twice and submitted financial information to show his financial hardship.

On 5 May 02, less than two weeks after the hearing and before a decision was issued, Petitioner, an Army reservist, was recalled to active duty. He deployed to Cuba on 23 Jun 02.

In a decision issued 18 Jun 02, the hearing officer found that the overpayment was actually $30,623.98. He also found that Petitioner should be given a credit of $11,306.30 for the 10% extremity disability, which resulted in a net debt of $19,317.68. He found Petitioner to be not without fault and therefore not entitled to a repayment waiver. Based on Petitioner's financial situation, the hearing officer ordered a monthly payment of $500.00. The notice of decision included an advisement of the right to appeal. There is no evidence that Petitioner ever attempted to appeal.

On 2 Jul 02, Petitioner's spouse sent Respondent a letter stating that Petitioner had deployed, she could not contact him, and asking Respondent to wait for his return.

On 14 Aug 02, Respondent sent a letter to Petitioner asking him to pay his debt and informing him that interest and administrative fees would begin to accrue. It also sent a letter to the United States Postal Service asking to verify the amount of Petitioner's pay available for offset. The Postal Service responded with information that indicated

Petitioner's bi-weekly disposable income was $1,184.51. On 30 Sep 02, Respondent sent Petitioner letters asking him to pay the debt in full, warning him that it was preparing to make $250.00 deductions from his bi-weekly pay, and advising him of his right to request a hearing before an administrative law judge.

Petitioner did not respond, and on 4 Nov 02 Respondent sent the Postal Service, with a copy to Petitioner, a request to begin the offset of $250.00 from each pay check. By letter on 10 Dec 02, Respondent asked the Postal Service to amend the amount to $230.77.

On 14 Dec 02, Petitioner returned from Cuba and on 26 Dec 02, he was released from active duty.

On 21 Jan 03, the Postal Service asked for clarification and on 4 Mar 03 Respondent sent a confirmation asking for $230.77 from each pay period. On 13 Mar 03, the Postal Service notified Petitioner it was starting deductions.

On or about 14 Oct 03, Petitioner sent a letter to the Office of Administrative Law Judges (OALJ) asking for help.[4] Although he did not specifically request a hearing, the case was docketed and on 7 Nov 03 both Petitioner and Respondent were ordered to submit short statements of the case, identify witnesses, and request a trial location. Petitioner responded on 29 Nov 03 with a letter summarizing his position and requesting Lubbock as the location for trial. Respondent also asked for no continuances or delays as long as the deduction continued. On 21 Jan 04, Respondent asked the Postal Service to stop the deductions, pending the hearing.

On 23 Jan 04, Respondent submitted its memorandum of law and exhibits. On multiple occasions Petitioner submitted various documents. On 22 Apr 04, Respondent requested a telephone conference, but Petitioner declined to participate. The request for the telephone conference was denied on 20 May 04. On 1 Oct 04, Petitioner contacted the OALJ to inquire about the status of his case.

The case was assigned to me on 20 May 05 and I conducted a conference call with the parties on 13 Jul 05. After both parties gave their views of the case, we discussed the hearing. I explained that a personal hearing is not required unless I determine that it is necessary to assess credibility or otherwise appropriate.[5] Both sides agreed to conduct the hearing on written submissions only and I ordered Petitioner to submit all documents for inclusion in the record to be followed by Respondent's submissions and then any rebuttal from Petitioner.

[4] The postmark on the envelope is the earliest evidence of Petitioner's communicating with OALJ.
[5] 29 C.F.R.§ 20.81.

On 9 Sep 05, Petitioner provided his submissions. They consist of a 2 page cover letter and 5 attachments. The attachments include: (1) the various letters he has received in the case from Respondent and the Postal Service, (2) an information paper on the Soldiers and Sailors Civil Relief Act (SSCRA),[6] (3) Respondent's memorandum and exhibits, with highlights and annotations in rebuttal, and (4) correspondence between Petitioner and various officials including Congressmen, his union, the President, the Governor and the Department of Defense.

Positions of the Parties

Respondent argues that the validity of the original debt determination is not before this court, and the only issues for adjudication at this time are whether Respondent has complied with the law in seeking salary offset and whether the offset is allowable and appropriate. Respondent cites its 18 Jun 02, 14 Aug 02, and 30 Sep 02 letters as complying with the requirement for 3 warning letters.[7] Respondent does amend the offset amount to $177.00 per pay period in order to comply with the 15% of disposable pay limitation.

Petitioner points out that he was deployed out of the United States when the three letters were sent. He cites the SSCRA and seeks return of the $6,500 that he says has been illegally deducted from his pay, in addition to $6,500 in other consequential costs. He also disputes Respondent's initial finding that he was not without fault in the overpayment.

Discussion, Findings of Fact and Conclusions of Law

The DCA in pertinent part provides that a debtor shall be afforded "an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement . . . concerning the terms of the repayment schedule."[8] On the other hand, the FECA states that "[t]he action of the Secretary or his designee in allowing or denying a payment under the sub-chapter is: (1) final and conclusive for all purposes and with respect to all questions of law and fact; and (2) not subject to review by another official of the United States or by mandamus or otherwise."[9]

[6] 50 U.S.C. § 521.
[7] 29 C.F.R. § 20.78.
[8] 5 U.S.C. § 5514(a)(2)(D).
[9] 5 U.S.C. § 8128(b).

Any apparent conflict between these statutory provisions has been resolved by the courts. "Federal courts have no jurisdiction to review final judgments of the Secretary of Labor and his officers in these statutory matters, regardless of whether other, more general; statutes might seem to grant such jurisdiction."[10] In the absence of a violation of the Constitution or a clear statutory mandate, the Secretary's determination does not fall under the exception to FECA's preclusion-of-review section.[11]

Consequently, I have no jurisdiction to revisit the substantive determination of Petitioner's debt by the Respondent under the FECA.[12] Only three issues properly remain before me. (1) Was the debt the Respondent seeks to recover through offset a debt Respondent determined under the FECA? (I have no authority to review the accuracy or fairness of that determination.) (3) Did Respondent properly comply with the administrative requirements relating to offsets?[13] (2) Are the terms of the proposed offset feasible, allowable and appropriate?

The record shows that Respondent determined under the FECA that Petitioner had been overpaid in amount of $19,317.68 and a debt existed in that amount. While Petitioner contends that he was not at fault in causing the overpayment and that the overpayment should be waived for hardship, he had an opportunity to raise those issues under the FECA process and I have no jurisdiction to consider them. Thus, I find that the debt Respondent seeks to recover through offset is the amount determined by Respondent under the FECA.

Whether Respondent properly complied with the procedural requirements relating to offsets is a more complex question. The regulation requires: (1) Respondent to be satisfied that the salary offset is feasible, allowable and appropriate, and to notify Petitioner of Respondent's policies for collecting a claim by means of salary offset.[14] (2) Respondent to consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests, giving due consideration to the debtor's financial condition.[15] (3) Respondent to review the claim and determine that the debt is valid and overdue.[16]

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[10] *Staacke v. U.S. Secretary of Labor,* 841 F.2d 278, 281 (9th Cir.1988) (internal citations omitted).
[11] *See, e.g., Wacks v. Reich*, 950 F.Supp. 454 (D. Conn 1996).
[12] *See, e.g., Milligan v. DOL, OWCP*, 1999-DCA-3 (ALJ Mar 30, 2000); *Brownlee v. Director, OWCP*, 1997-DCA-2 (ALJ Feb 5, 1999).
[13] 29 C.F.R. § 20.74 *et. seq.*
[14] 29 C.F.R. § 20.77(b).
[15] 29 C.F.R. § 20.77(c).
[16] 29 C.F.R. § 20.77(d).

(4) Respondent to send to Petitioner three progressively stronger written demands at no more than 30-day intervals informing him of the consequences of failure to repay.[17](5) Respondent to send to Petitioner at least 30 days prior to any deduction a notice of rights.[18]

The record leaves little question that Respondent was at least subjectively satisfied that the debt was valid and overdue and that the salary offset was feasible, allowable, and appropriate; could be both practically and legally accomplished; and was best suited to further and protect all of the Government's interests, giving due consideration to the debtor's financial condition. It is equally clear, that Respondent's initial calculations of $250 and then $230 per pay period were in excess of the limitation of 15% of disposable pay. Respondent now seeks only affirmation of an offset of $177 per pay period, which satisfies the limitation.[19]

Respondent argues on brief that the requirement for three progressively stronger demand letters was satisfied by the 18 Jun 02 hearing officer's decision and the 14 Aug 02 and 30 Sep 02 letters. While the hearing decision alone would be insufficient, the accompanying notice form and cover letter qualifies the 18 Jun 02 communication. What is more problematic is that Petitioner never received any of the communications because he had been recalled to active duty and deployed outside of the United States.[20] Respondent was put on notice of that fact in early July 2002, yet continued to proceed administratively as if Petitioner was simply ignoring the notices. While I find no provisions of the SSCRA that directly apply to this situation in its present procedural status, it appears that the DCA and corresponding regulations envisioned that notices sent to a deployed service member's spouse are insufficient to establish the required procedural predicate for offset action, in the absence of evidence of actual receipt.

Consequently, it is not until Petitioner returned from active duty on 26 Dec 02 that Respondent can reasonably claim to have provided Petitioner with the required notices. As of that time, Respondent had sent Petitioner (1) the 18 Jun 02, hearing decision and notice letter; (2) the 14 Aug 02 warning letter, (3) the 30 Sep 02 $250 per pay period offset warning letter, (4) a copy of its 4 Nov 02 letter to the postal service requesting initiation of offset at $250 per pay period; and (5) a copy of its 10 Dec 02 letter to the postal service requesting initiation of offset at $230.77 per pay period.

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[17] 29 C.F.R. § 20.78(a).

[18] 29 C.F.R. § 20.78(b) (such notice includes, *inter alia*, the origin, nature and amount of the debt; the intention of the agency to initiate offset; the amount, frequency, beginning date, and duration of the offset; the policy concerning assessment of interest, penalties, and administrative costs; the right to inspect and copy Government records relating to the debt; and the right to a hearing conducted by an administrative law judge).

[19] Calculations derived from information provided by the Postal Service in August 2002.

[20] Petitioner's spouse may or may not have informed Petitioner of the substance of the communications, but I decline to impute her knowledge to him, in the absence of direct evidence.

Collectively, those letters were sufficient to communicate to Petitioner the information required by the regulations.[21] However, there should have been no deduction attempted until at least 30 days after the offset warning letter, which cannot reasonably be said to have been transmitted to Petitioner until 26 Dec 02.

The record does not reflect that Petitioner communicated a desire to invoke his right to a hearing within 15 days of notice, even if that notice is deemed to have been received on 26 Dec 02. Consequently, Respondent appears to have been authorized to offset. Nonetheless, the earliest deduction should have taken place no earlier than 26 Jan 03. That is not an issue, however, because in spite of Respondent's best efforts to start the deductions as early as November 2002, the Postal Service did not start taking deductions until March 2003.

Those deductions were at the rate of $230.77 per pay period, which was in excess of what Respondent now concedes to be the $177 maximum. The deductions continued until January 2004, when Respondent asked the Postal Service to suspend deductions in recognition of the pending hearing. It is not clear from the record exactly how many deductions were made or what the current debt is, although Petitioner refers to wanting to recover $6,500 in deductions.

I find that because of the delay in the Postal Service's execution of Respondent's offset request, Petitioner was effectively afforded all of the procedural notices and warning required by the regulations. He may have been deployed/on active duty until 26 Dec 02, but he had all of January, February, and part of March to respond to the letters sent to him. It appears that he did not become actively engaged until well after the deductions began taking their toll on his financial status.

On the other hand, I find that Respondent sought, and the Postal Service deducted, amounts that were in excess of those allowed by the regulation in the amount of $53.77 per pay period.

With regard to the issue of whether the requested offset is feasible, allowable, and appropriate, the record is devoid of any specific current financial information.[22] Petitioner certainly asserts, in general, that his finances have suffered greatly by the offset and he is not in a position to absorb the offset. He also makes reference to the likelihood of bankruptcy proceedings. It would not be an irrational inference to conclude that the loss of $177.00 every two weeks will impose a significant financial burden on Petitioner and his family.

[21] 29 C.F.R. §20.78(a)-(b).
[22] The last detailed household budget information from Petitioner appears to have been provided to the original hearing officer in 2002.

The three major parts of Petitioner's argument appear to be (1) an attempt to re-litigate the original determination of fault and debt, (2) an assertion that Respondent's actions, while he was serving his country, deprived him of his due process rights and rights under the SSCRA, and (3) an argument that the offset amount is unfair and not financially feasible. I have no jurisdiction to review the original debt determination. I have determined that, except for the excessive amount, Petitioner was afforded his procedural rights, however inadvertently. Finally, there is limited information in the record upon which to make an "allowable and appropriate" determination.

Based on the foregoing, I find that the original debt of $19,317.68 was correct and Petitioner was liable for offset of that amount. I find that the proper offset procedures were ultimately followed and that deductions were taken from March 2003 until sometime in early 2004, but that the deductions exceeded the maximum allowable by $53.77 per pay period.

I conclude that Petitioner is indebted to Respondent in the amount of $19,317.68 less all amounts previously deducted and that this debt is recoverable through salary offset procedures pursuant to the DCA. However, I also find that in light of the excessive deductions previously taken and Petitioner's financial situation, an offset amount of $120.00 per pay period is allowable and appropriate.

ORDER

The Petitioner, Royce Harris, shall pay to the United States Department of Labor the amount of $19,317.68, less all amounts previously deducted. This amount shall be payable as a deduction from Petitioner's pay in the amount of $120.00 per pay period until the debt is satisfied. Salary offset deductions may be commenced as of the first full pay period following the date of this decision.[23]

So ORDERED.

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PATRICK M. ROSENOW
Administrative Law Judge

[23] 29 C.F.R. § 20.