



Issue Date: 14 July 2011

Case No.: 2011-DCA-1

**In the Matter of
ABDUL MUHAMMAD,
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 Abdul Muhammad, an employee of the United States Postal Service, through the salary offset procedures authorized under the Debt Collection Act¹ (DCA) and its implementing regulations.² Petitioner disputed Respondent's decision to collect this debt through salary offset and requested a review 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 8 Apr 09, Petitioner filed a claim for treatment of carpal tunnel syndrome. The claim was accepted. Petitioner stopped working on 12 Nov 09 and filed a claim for disability that was accepted and resulted in Petitioner receiving disability payments in 28 day periods, effective 12 Nov 09. Although he was cleared to return to work on 10 Jan 10, and actually did so on 19 Jan 10, he continued to receive disability compensation.

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.*

On 29 Jan 10, he was informed that he had been overpaid by \$501.63 (five days wages) because his 16 Jan 10 check failed to account for the fact that he was released to return to work on 10 Jan 10. On 8 Mar 10, Petitioner was notified that the overpayment determination was final and on 19 Apr 10, he submitted a money order to repay the \$501.63 overpayment. In spite of the overpayment notice, Petitioner continued to receive compensation payments through 10 Apr 10.

On 13 Apr 10, Petitioner was informed that he had been overpaid in the amount of \$8,294.64 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 an oral hearing with an agency representative that was held on 11 Aug 10.

At the hearing, Petitioner argued that he had believed the payments were proper and correct because by the time he received the three disability checks after he returned to work, he had missed five pay checks. He added he felt he was owed money for the work he missed before he started getting disability. He admitted he did not file a claim for that missed work, but then said he did not realize he needed to. He also indicated he did not realize that the disability payments were for 28 day periods, because he was normally paid bi-weekly. He conceded that the mathematical calculations appeared to be correct. He explained that he was not currently employed and his only income was VA disability of \$644 per month for a knee injury. He also reviewed his expense and his entries on the OWCP-20. The hearing officer kept the record open for 30 days to allow Petitioner to submit any additional documents.

In a decision issued 5 Oct 10, the hearing officer found much of Petitioner's testimony to be contradictory and unsubstantiated by the documents. She also found that there was an overpayment of \$8,294.64 and that Petitioner was not without fault and therefore not entitled to a repayment waiver. After the Postal Service was contacted to confirm Petitioner's current employment and disposable pay, on 5 Nov 10, he was notified of the final decision and informed that his failure to repay the debt in full could result in an offset of his pay. The amount due was modified as a result of a credit of \$1,526.90 for a period of disability from 29 Aug 10 to 12 Sep 10. Thus, the current debt was actually \$6,767.74. A final letter was sent to Petitioner on 23 Dec 10, noting that interest would accrue, that records indicated he had \$1,668.34 in bi-weekly disposable pay, and while up to 15% of his disposable pay could be offset, an amount of \$80 would be taken every two weeks to satisfy his debt. He was also advised of his right to request a hearing before an administrative law judge.

On 4 Jan 11, Petitioner submitted a request for waiver to the Office of Administrative Law Judges. He essentially said that the overpayment was not his fault, he spent the money on bills, and he should not be held responsible for the mistakes of others. Pursuant to his request the case was docketed and on 14 Jan 11 an order was issued directing the parties to file within 30 days a short summary of the case, their proposed witness list, and a proposed location for a hearing.

Respondent filed its documents and brief on 11 Mar 11, indicating that it had not received notice of the case until a few days earlier. The filing notes that hearings are generally conducted on the written record and that the only decision before the ALJ is whether the Respondent

properly complied with the administrative requirements relating to offsets and the terms of the proposed offset are feasible, allowable and appropriate. On 17 Mar 11, an order was issued to Petitioner, directing him to show cause why a default decision should not be entered because of his failure to respond to the 14 Jan 11 order. On 4 Apr 11, Petitioner faxed a single paragraph response, restating his position that he did not believe he had been overpaid. On 17 and 21 Jun 11, OALJ staff made phone calls to Petitioner and left messages asking if he wanted to supplement his submissions or appear for a hearing, but he did not respond.

Discussion

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."⁴ 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."⁵

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."⁶ 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.⁷

Consequently, I have no jurisdiction to revisit the substantive determination of Petitioner's debt by the Respondent under the FECA.⁸ Only three issues properly remain before me. (1) Was the debt the Respondent seeks to recover through offset 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?⁹ (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 \$8,294.64 and a debt existed in that amount. Even if I had the jurisdiction to review that decision, Petitioner has never submitted any legal or factual arguments that would have led to any contrary finding, instead primarily asking for a waiver because it is the agency's fault that they continued to pay him and he has spent the money. Thus, I find that the debt

⁴ 5 U.S.C. § 5514(a)(2)(D).

⁵ 5 U.S.C. § 8128(b).

⁶ *Staacke v. U.S. Secretary of Labor*, 841 F.2d 278, 281 (9th Cir.1988) (internal citations omitted).

⁷ See, e.g., *Wacks v. Reich*, 950 F.Supp. 454 (D. Conn 1996).

⁸ 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).

⁹ 29 C.F.R. § 20.74 *et. seq.*

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.¹⁰ (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.¹¹ (3) Respondent to review the claim and determine that the debt is valid and overdue.¹² (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.¹³ (5) Respondent to send to petitioner at least 30 days prior to any deduction a notice of rights.¹⁴

Respondent failed to submit any arguments relating to proper compliance and a default finding on that issue is appropriate. However, even if that were not the case, 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 proposed offset of \$80 per pay period, satisfies the limitation.¹⁵ Moreover, even in the absence of any suggestion to the contrary, the record shows that the Respondent complied with the remaining procedural requirements.

With regard to the issue of whether the requested offset is feasible and allowable, Petitioner failed to submit any arguments to me and has previously simply pointed out the fact that he has spent the money. The fact that he has done so is the reason for the periodic offset rather than single lump sum garnishment. It is not an irrational inference to conclude that the loss of \$80.00 every two weeks will not represent an unfeasible financial burden on Petitioner.

Based on the foregoing, I find that the determination of the original debt of \$8,294.64 was procedurally correct and Petitioner was liable for offset of that amount. I find that the proper offset procedures were followed. I conclude that Petitioner is indebted to Respondent in that amount, less any amounts previously deducted, and that the debt is recoverable through salary offset procedures pursuant to the DCA in the amount of \$80.00 per pay period.

¹⁰ 29 C.F.R. § 20.77(b).

¹¹ 29 C.F.R. § 20.77(c).

¹² 29 C.F.R. § 20.77(d).

¹³ 29 C.F.R. § 20.78(a).

¹⁴ 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).

¹⁵ Calculations derived from information provided by the Postal Service in August 2002.

ORDER

The Petitioner, Abdul Muhammad, shall pay to the United States Department of Labor the amount of \$8,294.64, plus any interest as per regulation and **less any amounts previously deducted**. This amount shall be payable as a deduction from Petitioner's pay in the amount of \$80.00 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.¹⁶

ORDERED this 14th day of July, 2011.

A

PATRICK M. ROSENOW
Administrative Law Judge

¹⁶ 29 C.F.R. § 20.