UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2009 MSPB 180

Docket No. NY-0831-08-0315-I-2

Robert Chamblin,

Appellant,

v.

Office of Personnel Management,

Agency.

OPM Claim No. CSA 4 185 163

September 3, 2009

Robert F. Hermann, Esquire, Westfield, New Jersey, for the appellant.

Karla W. Yeakle, Washington, D.C., for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman

OPINION AND ORDER

¶1 The Office of Personnel Management (OPM) petitions for review of the initial decision, issued April 16, 2009, that reversed its reconsideration decision and ordered it to correct "errors and irregularities" relating to deductions it made from the appellant's lump-sum annuity payment. For the reasons set forth below, the Board GRANTS OPM's petition for review, VACATES the initial decision, and DISMISSES the appeal for lack of jurisdiction.

BACKGROUND

¶2 The pertinent facts in this appeal are not in dispute. In 2004, OPM approved the appellant's disability retirement application, effective December 22, 1994, based upon the condition of schizophrenia. NY-0831-08-0315-I-2 (I-2) Appeal File, Tab 15, Stipulation of Facts 2. After providing the appellant with a lump-sum payment for the retroactive benefits that had accrued since the effective date of his retirement, the appellant asked OPM for an accounting of its computation of that payment. I-2 Appeal File, Tab 4, subtabs 2-5. OPM ultimately issued a reconsideration decision asserting that it had previously provided the appellant with an accounting of his annuity computation, and explaining how it determined his "HI 3 average salary" and periods for which the appellant was entitled to payment. I-2 Appeal File, Tab 4, subtab 2.

¶3 The appellant then filed an appeal of OPM's reconsideration, asserting that OPM had neither adequately explained its calculation, nor provided him with the full amount of his disability retirement benefits. I-2 Appeal File, Tab 1. OPM then admitted that its calculations included deductions for the federal employee group life insurance and federal employee group health insurance programs. I-2 Appeal File, Tab 4 at 1; Tab 15, Stipulation of Facts 15, 25. OPM also admitted that it had included coverage for these programs based upon its direct contacts with the appellant, and that it had not contacted the appellant's designated representative even though it had approved the appellant's disability retirement application based upon the appellant's schizophrenia. I-2 Appeal File, Tab 15, Stipulation of Facts 8-14. The appellant claimed that he did not validly elect either type of insurance and that OPM's calculation of his lump-sum retroactive annuity benefit was, therefore, incorrect because it improperly included deductions for the insurance. I-2 Appeal File, Tabs 16, 17.

¶4 The appellant also asserted that the Board has jurisdiction over this claim under *Lua v. Office of Personnel Management*, 102 M.S.P.R. 108 (2006). I-2 Appeal File, Tab 16 at 6. OPM argued that the Board lacked jurisdiction because

the appellant was only challenging its administration of the federal life insurance and health insurance programs, and that its decisions regarding these programs are not reviewable by the Board. I-2 Appeal File, Tab 11.

¶5 Following the submission of evidence and argument in lieu of a hearing, the administrative judge reversed OPM's reconsideration decision. I-2 Appeal File, Tab 18. In reaching this decision, the administrative judge first set forth the pertinent facts and the parties' positions on the jurisdictional issue. *Id*. at 4-5. The administrative judge then concluded that the Board had jurisdiction over the appeal and, because OPM's contacts with the appellant regarding his right to enroll in the health and life insurance programs were "fraught with irregularities," it therefore must reverse OPM's calculation of the lump-sum payment which included deductions for these benefits. *Id*. at 5-8.

¶6 In its petition for review, OPM reiterates its position that the Board lacks jurisdiction to consider the appellant's claims regarding his federal life insurance and health insurance. Petition for Review File, Tab 1.

ANALYSIS

¶7 In general, claims concerning the federal employee life insurance and federal employee health insurance programs are beyond the Board's jurisdiction. *See Richards v. Office of Personnel Management*, 97 M.S.P.R. 291, ¶¶ 5-6 (2004); *Campbell v. Office of Personnel Management*, 90 M.S.P.R. 68, ¶¶ 8-10 (2001); *Mitchell v. Office of Personnel Management*, 25 M.S.P.R. 186, 189 (1984). The Board has consistently reached this result in cases where an appellant has challenged OPM's determination that the appellant has received an annuity overpayment due to a retroactive election to participate in the federal life insurance or health insurance programs upon receiving an annuity.

¶8 For example, in *Campbell*, the appellant was an annuitant who was afforded an opportunity to change his life insurance election due to a change in the law. 90 M.S.P.R. 68, ¶ 2. The appellant's election and its ramifications on

his annuity due to the election's effective date caused OPM to determine that the appellant had received an annuity overpayment. *Id*., ¶ 3. The appellant challenged OPM's overpayment determination, asserting that he was being charged for life insurance coverage that was not in force for the period of coverage. *Id*., ¶ 4. After first acknowledging that it generally has jurisdiction over challenges to an annuity overpayment, the Board found that jurisdiction was lacking because the overpayment resulted from a change in life insurance coverage and premiums, rather than from a "computation" of the annuity. *Id*., ¶ 10. The Board also stated that its jurisdiction to review OPM overpayment determinations extends only to determinations that debts are owed to the Civil Service Retirement and Disability Fund, and that no such determination was at issue in the appeal. *Id*. The Board, therefore, concluded that OPM's decision concerning its administration of the life insurance benefits in this regard is not reviewable by the Board. *Id*. The Board has also reached this conclusion with respect to OPM's administration of health insurance benefits. *See Lee v. Office of Personnel Management*, 32 M.S.P.R. 149, 152-53 (1987); *Mitchell*, 25 M.S.P.R. at 189.

¶9 In *Miller v. Office of Personnel Management*, 449 F.3d 1374 (Fed. Cir. 2006), the court adopted the reasoning in *Campbell* to conclude that the Board correctly found that it lacked jurisdiction over the appellant's appeal of an annuity overpayment. There, OPM determined that the appellant owed money in back group life insurance premiums and sought to collect the money by reducing the appellant's retirement annuity payments. 449 F.3d at 1375. The appellant filed an appeal challenging the amount of the overpayment and requesting a waiver of the repayment. *Id*. at 1375-76. The Board dismissed the challenge to the amount of the overpayment for lack of jurisdiction, and found that, while it had jurisdiction over the waiver claim, waiver was not warranted. *Id*. at 1377.

¶10 On appeal, the court agreed. It first noted that the Board has consistently held that, when OPM seeks to offset an employee's salary or retirement benefits

to collect a debt, the Board does not have jurisdiction over the merits of the underlying dispute that gave rise to the debt. *Id*. at 1378. The court then noted that the instant case was similar to *Campbell*, and that in both cases the overpayments at issue were caused by OPM's assessment of the appellant's rights and responsibilities under the life insurance statutes rather than the retirement statutes. *Id*. at 1378-79. The court also specifically rejected the argument that any reduction in a retiree's annuity payments affects the rights or interests of the annuitant under the retirement statute and is, therefore, reviewable by the Board. *Id*. at 1379. The court found that this theory would give the Board very broad authority over a wide variety of substantive claims simply because of the mechanism used to collect the obligations stemming from the claims, contrary to Congressional intent. *Id*.

¶11 The Board, however, has also recognized several exceptions to the general rule that it lacks jurisdiction over OPM decisions concerning the administration of the health insurance and life insurance programs. One exception arises in petitions for enforcement. Indeed, the appellant relies upon such a case, *Lua*, to support his jurisdictional claim. I-2 Appeal File, Tab 13. *Lua* concerned whether OPM was in compliance with the final Board decision that ordered OPM to award the appellant a disability retirement annuity, when it failed to adequately explain its deduction of life insurance premiums from the appellant's annuity. *Lua*, 102 M.S.P.R. 108, ¶ 1. There, the Board ordered OPM to award the appellant a disability retirement annuity, and the appellant then told OPM that she wished to continue her life insurance benefits during retirement. *Id*., ¶ 5. The appellant later filed a petition for enforcement, alleging that OPM had not correctly paid her the disability retirement benefits to which she was entitled. *Id*., ¶ 6. The Board found that, while OPM had generally complied with the final Board order, it had not adequately explained its deduction of life insurance premiums from the appellant's annuity, and ordered OPM to submit evidence and argument on this

issue. *Id*. In response, OPM argued, among other things, that the Board lacked jurisdiction to address federal employee group life insurance issues. *Id*., ¶ 7.

¶12 The Board disagreed. *Id*., ¶ 8. It first noted that it has broad enforcement authority to order corrective action in cases of noncompliance in any matter within its jurisdiction. *Id*. It then found that it had jurisdiction over appeals from OPM's final decisions administering the federal retirement systems, and that the case originated from a petition for enforcement of a Board decision reversing an OPM final decision that affected the appellant's rights or interests with regard to her retirement. *Id*. Thus, the Board found that it "clearly" had jurisdiction over issues relating to the proper grant and payment of the appellant's disability retirement annuity. *Id*. The Board also noted that jurisdiction over life insurance benefits claims under the federal employee group life insurance program are statutorily placed in the United States district courts and Court of Federal Claims, rather than the Board. *Id*. The Board found, however, that the appellant was not challenging her election under the program, and was instead questioning whether OPM's computation of her annuity correctly encompassed OPM's retroactive deductions of certain life insurance premiums from her annuity. *Id*. The Board, therefore, concluded that it had jurisdiction over the appeal "as an issue of compliance from its final decision granting the appellant's disability retirement annuity." *Id*.; *see also Ogden v. Office of Personnel Management*, 92 M.S.P.R. 522, ¶¶ 7-9 (2002). Finally, it distinguished its holding in *Campbell*, where it found jurisdiction lacking. *Lua*, 102 M.S.P.R 108, ¶ 8.

¶13 A second exception to the general rule that the Board lacks jurisdiction over claims concerning the life insurance and health insurance programs concerns requests for waiving repaying annuity overpayments caused by the retroactive application of premiums for those programs. In *McIntosh v. Office of Personnel Management*, 104 M.S.P.R. 544 (2007), the Board found it had jurisdiction over a request for a waiver of an annuity overpayment caused by OPM's failure to properly deduct life insurance premiums from the appellant's annuity. In

reaching this conclusion, the Board distinguished this circumstance from the situation in *Miller*, by first noting that *Miller* relied upon *Campbell*. 104 M.S.P.R. 544, ¶ 5. The Board then explained that *Campbell* did not involve a request to waive recovery of an overpayment and only addressed the merits of OPM's decision that an overpayment had been made. *Id.*, ¶ 6; *Campbell*, 90 M.S.P.R. 68, ¶ 10.

¶14 The Board found that the circumstances in *McIntosh* more closely resembled those in *Mitchell v. Office of Personnel Management*, 97 M.S.P.R. 566 (2004), which also involved a request to waive repayment of an overpayment resulting from OPM's failure to withhold from an annuity the correct amount for the annuitant's life insurance premiums. 104 M.S.P.R. 544, ¶ 6. The Board found in both cases that it has jurisdiction to review OPM's final decisions on requests that recovery of annuity overpayments be waived, even when it lacks jurisdiction to consider the propriety of the overpayment determination itself. *Id.*, ¶ 7; *Mitchell*, 97 M.S.P.R. 566, ¶ 12. The Board distinguished these cases from *Campbell* because the annuitants had sought review of OPM's refusal to waive recovery of the overpayment, rather than simply contesting OPM's overpayment determination and remanded the case to the regional office for adjudication of the waiver issue. *McIntosh*, 104 M.S.P.R. 544, ¶ 7. The Board, therefore, found that it had jurisdiction to review the appellant's claim that OPM should waive recovery of the overpayment at issue. *Id.*

¶15 The appellant’s circumstances here do not fall under any of the exceptions to the general jurisdictional bar on claims regarding life insurance or health insurance. The appellant relies upon *Lua*, but that case concerned a petition for enforcement while the present case does not. Indeed, the Board’s reasoning that it had jurisdiction in *Lua* was grounded in the Board’s enforcement authority and the case’s origins as a petition for enforcement. 102 M.S.P.R. 108, ¶ 8. The Board also specifically noted that the appellant was not challenging her election under the life insurance program, thereby implying that such a challenge is

beyond the Board's jurisdiction. *Id*. Here, however, the appellant is making this precise challenge -- claiming that he did not make a valid election to participate in either the health insurance or life insurance program. I-2 Appeal File, Tab 17. We, therefore, find that *Lua* does not support the conclusion that the Board has jurisdiction over this appeal.

¶16 The present case also differs from precedent that examines requests for waiving the repayment of overpayments caused by retroactive elections of life insurance or health insurance benefits. In order to request waiving repayment of an overpayment, there must first be an overpayment. 5 C.F.R. part 831, subpart N. Here, however, the appellant has not received an overpayment, and OPM has not issued a final or reconsideration decision regarding an overpayment. I-2 Appeal File, Tab 4, subtab 2. Instead, OPM has deducted the required premiums from the appellant's lump-sum payment of retroactive benefits. *Id*.

¶17 We, therefore, conclude that the present case falls under the general rule that the Board lacks jurisdiction over claims regarding federal health and life insurance programs. To the extent the appellant's circumstances are analogous to the decisions discussed above, we find the present case most like *Miller* and *Campbell*, where the appellants objected to the effect that their retroactive election for life insurance coverage had on their retirement benefits. Both the Board and the court held that these objections arose under the life insurance program, rather than the retirement statutes, and were, therefore beyond the Board's jurisdiction. We find that the same reasoning applies here. While we are sympathetic to the appellant's circumstances, including OPM's arguably inappropriate contacts with him, his remedy does not lie with the Board on the basis of his current claims. *See Armachuelo v. Merit Systems Protection Board*, No. 2009-3078, 2009 WL 1971372 (Fed. Cir. July 9, 2009).

ORDER

¶18 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's

"Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

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William D. Spencer
Clerk of the Board
Washington, D.C.