

DATE: September 29, 2020

In Re:)
 [REDACTED]) Claims Case No. 2019-WV-112510.2
Employee)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Erroneous under-deduction of an employee’s Federal Employees’ Group Life Insurance (FEGLI) premiums resulted in a debt to the government. Since the employee knew or should have known that there was an error and since he received the benefit of the FEGLI coverage, waiver of the debt is not appropriate under 5 U.S.C. § 5584.

DECISION

An employee of the Department of Defense requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-112510, dated June 22, 2020. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the employee’s debt totaling \$16,165.01 due to under-withholding of his Federal Employees’ Group Life Insurance (FEGLI) premiums.

Background

The employee was appointed to his position at DFAS effective April 12, 2001. As part of the hiring process, the employee completed an election form for the FEGLI program on April 11, 2001. The employee requested basic life insurance plus Option B (additional) at two times his pay, and Option C (family) in the multiple of four, which became effective April 12, 2001. However, due to an administrative error, his Notification of Personnel Action (SF-50), erroneously reflected basic only life insurance. As a result, insufficient amounts were withheld from the employee’s salary for FEGLI premiums from April 12, 2001, through June 24, 2017, causing the employee to be overpaid salary in the amount of \$16,165.01.

In the appeal decision, the DOHA adjudicator found that since the employee elected the higher FEGLI coverage, he should have at least questioned the SF-50 issued on April 12, 2001, reflecting that he only had basic coverage. Had he done so, the matter would have presumably been corrected, and the perpetuation of the error could have been precluded. Therefore, the adjudicator upheld DFAS's denial of waiver of the resulting overpayment.

In his reconsideration request, the employee states that he should not be held liable for his oversight of not noticing a minor discrepancy in the coding of his insurance on his SF-50. The coding led him to believe that he only had basic coverage. He states that with the passage of time and his life changes, *i.e.*, children growing older and his divorce, it never occurred to him that he had requested the additional coverage in the first place. He questions why he would assume that he have coverage that was not paid for. He requests waiver on the basis that the debt resulted from an administrative error with no intention of fraud, fault, misrepresentation or lack of good faith on his part.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. An employee who receives payments erroneously from the government acquires no right to the money. Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1. It is well-established that waiver is not appropriate in cases where the employee is provided information such as an SF-50 which contains sufficient information to indicate the existence of an error, but fails to question the effect of it on his salary. *See* DOHA Claims Case No. 09032306 (April 15, 2009); and DOHA Claims Case No. 02052003 (July 23, 2002).

In this case, the underpayment of premiums from the employee's salary was a result of administrative error. However, as pointed out by the adjudicator in the appeal decision, if the employee had carefully examined the SF-50 he received on April 12, 2001, and compared it to the election he made for his FEGLI coverage, the error that led to the overpayment could have been prevented at that time. Since the employee failed to question the accuracy of the pay information he was given, waiver is not appropriate.

As for the employee's suggestion that he only received the coverage that he paid for, and not the additional coverage he elected, we note that the employee had the benefit of the FEGLI coverage at the higher rate during the period in question. If the employee had died during the period involved, his beneficiary would have received the higher rate of life insurance (minus the unpaid premiums) even though he had underpaid his premiums. We have consistently held that it is not inequitable for an employee to pay for coverage which he elected. Therefore, waiver of

the employee's debt resulting from the under-deduction of FEGLI premiums from his salary is not appropriate. *See* DOHA Claims Case No. 2017-WV-081003.2 (December 8, 2017); and DOHA Claims Case No. 2015-WV-042203.2 (May 27, 2015).

Conclusion

The employee's request for relief is denied, and we affirm the June 22, 2020 appeal decision. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board