

DATE: August 18, 2020

In Re:)

[REDACTED])

) Claims Case No. 2020-WV-021101.2

Claimant)

**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 Defense of Defense requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-WV-021101, dated May 18, 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 \$8,653.41, due to under-withholding of his Federal Employees' Group Life Insurance (FEGLI) premiums.

Background

The employee was appointed to his position effective July 19, 1999. His initial Notification of Personnel Action (SF-50) reflecting his appointment showed his FEGLI coverage in Block 27 as C0, Basic Only. On July 30, 1999, the employee completed an election form for the FEGLI program requesting Option B – Additional insurance in the multiple of four (Basic + Option B (4x)). Based on his new election, an SF-50 was issued on September 3, 1999, updating Block 27 retroactive to July 19, 1999. However, due to an administrative error, the SF-50 dated September 3, 1999, reflected his FEGLI election as Basic + Option B (3x). As a result of this

error, insufficient amounts were withheld from the employee's salary for FEGLI premiums from July 19, 1999, through February 18, 2017, causing an overpayment of \$8,653.41.

In the appeal decision, the DOHA adjudicator found that the employee should have at least questioned the SF-50 issued on September 3, 1999, since he had elected FEGLI coverage at Basic + Option B (4x) on July 30, 1999. 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 the indebtedness resulted from an administrative error caused by DFAS. He states that DFAS has been financially enriched and he has suffered financial loss. He appeals to DOHA's sense of fairness and suggests that DOHA compromise the debt by only requiring him to pay back half of the \$8,653.41 owed.

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 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 September 3, 1999, the error that led to the overpayment could have been prevented at that time. In addition, over the course of the time period in question, the record reflects the employee received at least one SF-50 a year which showed the incorrect election, Basic + Option B (3x). 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 be held liable for half of the debt amount, when waiver is precluded, we have no authority to allow an employee to pay back only a portion of what he owes. In addition, 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 May 18, 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