



program, and requested basic life insurance plus two additional optional coverages with multiples of five. She was not eligible for FEGLI until she received her career conversion. Due to administrative error, her pay record was not updated to reflect her requested FEGLI election. During the period August 11, 2002, through June 13, 2015, her record reflected that she only requested basic coverage. This error resulted in premium deductions of only \$1,514.04 rather than premiums of \$8,713.64 for basic life insurance plus the options selected over the affected timeframe.

Further, during the period between August 11, 2002, through January 11, 2015, all of her SF-50s, *Notification of Personnel Action*, reflected her as having only basic FEGLI coverage.<sup>1</sup> Multiple SF-50s, were issued involving the employee, including her career conversion, pay adjustments, promotions/step increases, changes in status, changes in her name and position assignment and other personnel actions. Each SF-50 from August 11, 2002, through January 11, 2015, reflected the employee only had basic FEGLI.

In DOHA Claim No. 2017-WV-081003, the DOHA adjudicator concluded that the employee acted in good faith in accepting the overpayment which occurred during the period August 24, 2002, through January 11, 2003, in the amount of \$74.70, and that all other conditions necessary for waiver of this portion of the claim have been met. The employee had argued that the problem was not her fault and had been caused by failure of her Human Resource (HR) department. She further argued that her leave and earnings statements (LES) reflected premiums were being withheld from her salary, but that she did not know that the options she selected were not processed. The adjudicator concluded that because the employee had the same amount of premiums deducted from her salary from August 24, 2002, through January 11, 2003, the employee reasonably may not have been aware that her FEGLI premiums were initially miscalculated, and waiver was appropriate. The adjudicator also found that it was not against equity and good conscience to deny waiver of \$7,124.90 because her FEGLI premiums increased slightly on several occasions between 2002 and 2003 from the minimal deductions that had previously been deducted from the employee's salary. The adjudicator concluded the employee should have seen the changes in her premiums and presumably questioned the accuracy of such minimal deductions for the FEGLI coverage she requested, enabling the discovery of the discrepancy.

In her request for reconsideration, the employee again focuses on the actions of her HR department and suggests some improper motives by an HR official. However, the same HR official supported the employee's request for a waiver because the election for added options was not processed through no fault of the employee and the debt had created a financial hardship for her.

---

<sup>1</sup>A SF-50, dated January 11, 2015, corrected block 27 of the Form for all previous actions from September 3, 2002 to January 11, 2015. The correction reflects the employee had Basic FEGLI plus Option B (5X) plus Option C (5X) for the entire period.

## Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interests of the United States. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). In relevant part, generally, persons who erroneously receive a payment from the government acquire no right to it and are bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. *See* DOHA Claims Case No. 02052003 (July 23, 2002), *aff'd* by Deputy General Counsel (Fiscal) on January 16, 2003. In theory restitution results in no loss to the recipient because the recipient received something for nothing. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. It is not available to a party who is not entirely without fault. *See* Instruction ¶ E4.1.1; and DOHA Claims Case No. 03101402 (October 20, 2003).

A waiver is usually inappropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The standard used to determine fault is whether a reasonable person would or should have known that they were receiving pay in excess of their entitlements, and if the employee failed to take action to have it corrected. *See* DOHA Claims Case No. 2010-WV-070705.2 (November 30, 2010); and DOHA Claims Case No. 02052003, *supra*. In such instances, the recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

We have consistently held that waiver is not appropriate in cases where the employee has records (such as leave and earnings statements and SF-50s) which, if reviewed, would indicate the existence of an error. *See* DOHA Claims Case No. 2010-WV-070705.2, *supra*; DOHA Claims Case No. 09032306 (April 15, 2009); DOHA Claims Case No. 03101402 (October 20, 2003); and DOHA Claims Case No. 02052003 (July 23, 2002), *supra*. It is the employee's responsibility to review materials provided to her in order to ensure her pay and benefits are recorded correctly. In the present case, the employee received SF-50s that reflected she only had coverage for basic FEGLI. The amount of the deduction was initially \$3.31 from her bi-weekly pay. Over the next several years, the bi-weekly deductions increased, albeit slightly on each occasion. By 2004, the bi-monthly premiums increased to \$4.35; by 2005 to \$4.65 and \$4.80; by 2006 to \$4.95 and \$5.10; by 2008 to \$5.25 and \$5.40; and later reaching \$5.85 through January 2015; and reaching \$6.00 in early 2015. Claimant never sought to ascertain whether her coverage was as she had requested or if the increases were correct.

The employee stated that she did not know her elected options were not processed. She was aware she had made the election to add significant optional coverage. Her SF-50s over a course of years reflected only basic FEGLI. The premiums deducted were very low for typical life insurance coverage. At the time the employee elected to add options, information was available to her that indicated the correct amount of premium deductions that were due. Given that the employee had elected options at multiples of five, she should have reviewed her LES and SF-50s to make sure the correct amount was deducted for the coverage selected. Finally, when her premiums changed, albeit in small increments, it should have alerted her to ascertain whether the premiums were then correct for the options she chose.

It is not against equity and good conscience to recover the erroneous payment when the government has provided the benefit and the employee has received the benefit of the coverage she elected. *See* DOHA Claims Case No. 2015-WV-042203.2 (May 27, 2015); and DOHA Claims Case No. 03101402, *supra*. Once an employee makes an election and requests the optional coverage, it remains in effect until a change is requested. *See* DOHA Claims Case No. 2015-WV-042203.2, *supra*; and DOHA Claims Case No. 2010-WV-061002.2 (September 23, 2010). If the employee had died during the period involved, her beneficiaries would have received the life insurance, less any uncollected premiums.

### **Conclusion**

The employee's request for relief is denied, and we affirm the October 19, 2017, decision to deny waiver in the amount of \$7,124.90. 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: Ray T. Blank, Jr.

---

Ray T. Blank, Jr.  
Member, Claims Appeals Board