

KEYWORDS: waiver of indebtedness; FSGLI

DIGEST: A service member did not decline coverage in the Family Servicemember's Group Life Insurance (FSGLI), and is indebted for unpaid premiums for this coverage. It is not against equity and good conscience to deny waiver of the debt for the premiums because the member had the benefit of the coverage under FSGLI.

CASENO: 2009-WV-062202.2

DATE: 1/20/2009

DATE: January 20, 2009

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In Re: )  
      [REDACTED] ) Claims Case No. 2009-WV-062202.2  
                  )  
Claimant \_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A service member did not decline coverage in the Family Servicemember's Group Life Insurance (FSGLI), and is indebted for unpaid premiums for this coverage. It is not against equity and good conscience to deny waiver of the debt for the premiums because the member had the benefit of the coverage under FSGLI.

**DECISION**

A member of the Army National Guard on active duty requests reconsideration of the November 9, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 09062202.

**Background**

The record shows that Public Law 107-14, § 4, 115 Stat. 25, 26-30 (2001), established Family Servicemember's Group Life Insurance (FSGLI) coverage for members of the uniformed services, effective November 1, 2001, who were eligible for Servicemember's Group Life Insurance (SGLI), unless they elected not to participate in the program. The Defense Finance and Accounting Service (DFAS) determined that this member did not decline coverage, so FSGLI premiums should have been withheld from his pay. Due to an administrative error, FSGLI premiums were not withheld from his pay from November 1, 2001, until February 29, 2008, resulting in an overpayment of \$800.00. He was notified of the debt by a military pay technician on March 14, 2008. The member submitted a DD Form 2789, *Waiver/ Remission of Indebtedness Application*, on March 28, 2008. (The member also included a Memorandum of Record, Subject: Rebuttal of Family SGLI Debt, dated March 22, 2008). DFAS denied waiver of the \$800.00 in an undated administrative report, but advised the member he could appeal the decision. The member submitted his request for an appeal on May 30, 2009. DFAS recommended the denial be sustained on June 18, 2009, and forwarded the record to DOHA for a decision. DOHA issued an appeal decision on November 9, 2009. Prior to his request for reconsideration, the member requested a thirty-day extension in a letter dated November 26, 2009, which was granted on December 14, 2009.

The member argues that the coverage of the FSGLI is not automatic, with the sole factor terminating coverage being the member's declination; but rather, coverage approval is automatic contingent upon the informed consent of the member. The member argues that the methods used to disseminate information about FSGLI only document that a message was sent, with no ability to confirm that the message was received. Due to the requirement for informed consent regarding this issue, and the failure of unit commanders to inform soldiers of this benefit, automatic enrollment is inconsistent with the provisions and intent of Public Law 107-14.<sup>1</sup> The member agrees that while a service member does share the responsibility to ensure the accuracy of his pay and allowances, he argues that there is no regulatory or statutory requirement for the soldier to review his LES. This was particularly true during the hectic time of September 2001 with the operational requirements necessitated by world events. The member argues that maximum coverage of both service members in a married military couple at the maximum rate for SGLI would preclude coverage under FSGLI. Finally, the member cites the fact that military spouses cannot be claimed as dependents in DEERS, but simply are registered as spouses, seems at odds with the assertion by DFAS and the Veterans Administration (VA) that they are "insurable dependents." The member argues that FSGLI is meant to preclude a dependent child from being doubly insured, and this intent to preclude double coverage for a dependent child would also apply to married military spouses.

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<sup>1</sup>In accordance with Section 4 of Public Law 107-14, when it became effective, FSGLI automatically covered spouses and dependent children of members. *See* 38 U.S.C. § 1967 and ¶ 471201 of Chapter 47, Volume 7A, of DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Military Pay and Policy and Procedures—Active Duty and Reserve Pay.

The adjudicator in her decision sustaining DFAS's denial found that the member's October and November 2001 Leave and Earning Statements (LESs) notified the member that the FSGLI coverage would become effective November 1, 2001. Further, the member's October 2001 LES advised the member that he should visit his personnel office in order to reduce or decline coverage. The member did not present documentary evidence that he declined coverage. The adjudicator found that since the member would have received the benefit of the coverage, waiver of repayment of the premiums was not appropriate. The adjudicator stressed the importance of a careful review by each member of the LES provided by the agency. She found that waiver was not appropriate since the member had a LES which put him on notice of the accrual of the debt.

### **Discussion**

The sole issue in this case is whether the overpayment of \$800.00 due to FSGLI premiums not being deducted from the member's pay is a debt that may be waived. We have the authority to grant waiver of the member's debt if appropriate under 10 U.S.C. § 2774. Waiver decisions are based on the standards for waiver outlined in Enclosure 4 of Department of Defense Instruction 1340.23 [hereinafter Instruction] and prior decisions of DOHA and the Comptroller General. Statutory and regulatory guidance regarding waiving such a debt provide authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. Whether to grant the waiver under 10 U.S.C. § 2774, as the statutory language indicates, is not decided as a matter of right whenever a member innocently receives pay to which he is not entitled, but is decided on the principles of equity and fairness presented in each case.

In the present case, the record reflects that the member indicated on his DD Form 2789 that he was receiving Leave and Earning Statements. The member indicates that he was registered on MyPay. The member was notified in his October and November 2001 LESs "Family SGLI Eff 1 Nov 2001. Auto enrollment of spouses . . ." His November 2001 LES stated "Family SGLI Eff 1 Nov 2001. Reduce or decline spouse's coverage by 31 Dec to receive a refund of any Family SGLI premiums paid." In order to decline coverage for the member's spouse, the member had to elect to do so in writing.<sup>2</sup> The member certainly was familiar with the format of the LES. The LES is issued to members so that they can verify the accuracy of their pay. DOHA decisions and those of the Comptroller General have stressed the importance of a careful review by each member of the LES provided by the agency. We have consistently held that members have a duty to carefully examine their LES and report any errors. If a member fails to fulfil this obligation, we have held that the member is at fault, and waiver is precluded. *See*

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<sup>2</sup>See ¶ 471208 of Vol. 7A, DoDFMR.

DOHA Claims Case No. 97032501 (June 9, 1997); DOHA Claims Case No. 06111301 (November 15, 2006); DOHA Claims Case No. 07031906 (March 27, 2007); and DOHA Claims Case No. 09091601 (September 30, 2009).

Furthermore, if the member's insured family member had died during the period in question, the beneficiary would have received the benefit of FSGLI coverage minus the uncollected premiums. The member received the benefit and, therefore, is liable for the premiums. *See* DOHA Claims Case No. 07031906, *supra*. We fully considered the other issues raised by the member, but they are not relevant to the matter of waiver. The member may raise them with the Army or with DFAS if he chooses.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the November 9, 2009, appeal decision. In accordance with the Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member's waiver request under 10 U.S.C. § 2774.

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
Member, Claims Appeals Board

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