

KEYWORDS: waiver of indebtedness; Federal Employees' Group Life Insurance (FEGLI)

DIGEST: An employee was overpaid when insufficient amounts were deducted from her salary for Federal Employees' Group Life Insurance (FEGLI). She was provided with information which, if reviewed, would have alerted her to the continuing overpayments. Since the employee knew or should have known that there was an error, waiver of the debt is not appropriate under 5 U.S.C. § 5584.

CASENO: 2010-WV-070705.2

DATE: 11/30/2010

DATE: November 30, 2010

_____)
In Re:)
 [REDACTED]) Claims Case No. 2010-WV-070705.2
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee was overpaid when insufficient amounts were deducted from her salary for Federal Employees' Group Life Insurance (FEGLI). She was provided with information which, if reviewed, would have alerted her to the continuing overpayments. Since the employee knew or should have known that there was an error, waiver of the debt is not appropriate under 5 U.S.C. § 5584.

DECISION

An employee requests reconsideration of the September 14, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-070705. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting

Service (DFAS) not to waive overpayments of salary made to the employee in the amount of \$20,427.30.

Background

The record shows that the employee was converted from a non-appropriated fund position to an appropriated fund position on June 17, 1999. Upon conversion, the employee filed an SF 2817 (*Life Insurance Election*) to elect Federal Employees' Group Life Insurance (FEGLI) with basic coverage plus Option B in the amount equal to five times her annual basic salary. Due to administrative error, her FEGLI coverage was entered into the pay system as basic only. As a result, insufficient amounts (basic only) were withheld for FEGLI coverage from the pay period ending (PPE) June 19, 1999, through March 14, 2009, causing an overpayment of \$20,427.30.

In her reconsideration request, the employee states that from June 17, 1999, through January 2009, she believed that the correct amount was being deducted for the FEGLI coverage she had elected on the SF 2817 on June 17, 1999. She thought that the amount reflected on her leave and earnings statements (LES) for deduction of FEGLI coverage was correct. She states that in January 2009 when she began preparing for retirement, she visited her Civilian Personnel Office (CPO). After reviewing her file, she was told that she was only enrolled in the basic only life insurance plan and had been enrolled in that plan since her entry into the appropriated fund system in June 1999.¹ She reviewed her personal files and found a copy of the original SF 2817 dated June 17, 1999. She provided this copy to her CPO representative. The CPO representative contacted the central CPO office and requested a hard copy of the employee's CPO file. The employee states that there was no record of the original SF 2817 in the file and it could not be located. The employee states that on January 4, 2009, a Human Resources (HR) technician attempted to re-enroll her into the basic plus Option B plan at the rate of five times her salary with an effective date of June 17, 1999. As a result, the employee's pay was garnished in the amount of \$280.50 in April 2009. When she inquired about the garnishment, the HR technician told her that she should submit a request for waiver of indebtedness and request the garnishment be reduced until further decisions were rendered. On April 14, 2009, the employee submitted her waiver application. She states that at that time, the total amount of her debt was reflected on her LES at \$5,715.00. The employee asserts that she could not have foreseen that her paperwork would be lost, inadequate coverage would be assigned, and her honest attempts to bring it to the CPO's attention would result in a \$20,000 debt. She contends that she should only be held liable for paying the costs associated with basic plus Option B from January 2009 to present. She

¹In both her request for waiver and her reconsideration request, the employee appears to be using the term "Option A Basic Insurance plan" coverage to denote basic only coverage. We note that the record does not reflect that the employee was enrolled in Option A. The record reflects that the overpayment was caused when the employee's FEGLI coverage was entered into the pay system as basic only instead of basic plus Option B in the amount equal to five times her annual basic salary.

asserts that she was only enrolled and financially liable for basic only coverage from June 17, 1999, through January 2009. She also states that if she had died between June 17, 1999, and January 2009, her beneficiaries would only have received payments for basic only coverage.

Discussion

Our decision in this matter is limited to a determination of whether waiver is appropriate under 5 U.S.C. § 5584. Under this statute, we may waive a claim by the government for the erroneous payment of pay or allowances if repayment 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 employee. 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* DoD Instruction 1340.23 (Instruction)

¶ E4.1.3. A person 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. Fault, as used in 5 U.S.C. § 5584, is considered to exist if it is determined that the employee should have known that an error existed but failed to take action to have it corrected. Our decisions and those of the Comptroller General indicate that waiver is not appropriate in cases where the employee has records (such as LES) which, if reviewed, would indicate the existence of an error. *See* DOHA Claims Case No. 090232306 (April 15, 2009); DOHA Claims Case No. 02052003 (July 23, 2002); B-261484, June 30, 1995; B-253640, Nov. 4, 1993; B-248887, Oct. 2, 1992; and B-224910, June 22, 1987.

In this case, the overpayments were the result of administrative error. However, that fact by itself does not entitle the employee to waiver under 5 U.S.C. § 5584. Coverage exists in the amount elected, and administrative error alone is an insufficient basis for granting waiver. While there is no issue here of fraud, misrepresentation, or lack of good faith on the part of the employee, there is a reasonable basis to support the DOHA adjudicator's conclusion that the employee is partially at fault under the waiver statute, 5 U.S.C. § 5584. As pointed out by the DOHA adjudicator, the record shows that the employee requested the insurance at basic plus Option B in the amount equal to five times her annual basic salary on June 17, 1999. Although the employee may have thought that the correct FEGLI amount was being deducted from her salary, given the fact that she had elected FEGLI coverage in the amount equal to five times her annual basic salary, she should have reviewed her LES and other documents she was provided to make sure that the correct amount was deducted for the more expensive insurance coverage.² *See* DOHA Claims Case No. 07052404 (June 5, 2007).

As discussed above, waiver is not available as a remedy under 5 U.S.C. § 5584, in this

²In addition, the record contains a *Notification of Personnel Action*, (SF-50), dated January 4, 2000, that lists the employee's FEGLI coverage as "Basic Only."

situation. We note that section 8707(d) of Title 5, United States Code, grants an agency (in this case, the Army) the authority to waive the collection of unpaid life insurance deductions, where it fails to withhold the proper amount. *Cf.* 65 Comp. Gen. 216 (1986) and B-207339, May 23, 1983 (discussing agency's authority to consider waiver under 5 U.S.C. § 8707). Under this statute, the Army could determine that due to the equities involved here, collection is not appropriate. *See* B-196173, Dec. 30, 1980. As noted above, the agency input the employee's FEGLI coverage into the pay system as basic only. The error presumably would have gone undetected, except that the employee provided her copy of the original SF 2817 dated June 17, 1999. The debt was generated only when the HR official attempted to assist the employee by entering the correct information into the pay system.

Conclusion

The employee's request for relief is denied, and we affirm the September 14, 2010, appeal decision to deny waiver in the amount of \$20,427.30. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee's waiver request under 5 U.S.C. § 5584.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board