

KEYWORDS: waiver of indebtedness

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 there was an error and since she received the benefit of the FEGLI coverage, waiver of the debt under 5 U.S.C. § 5584 is not appropriate.

CASENO: 2010-WV-061002.2

DATE: 9/23/2010

DATE: September 23, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-WV-061002.2
)	
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 there was an error and since she received the benefit of the FEGLI coverage, waiver of the debt under 5 U.S.C. § 5584 is not appropriate.

DECISION

A U.S. Army employee requests reconsideration of the August 31, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-061002. In that decision, our Office denied waiver of collection of the overpayment, which totaled \$3,934.92.

Background

The record shows that on June 11, 1999, the employee initiated Standard Form 2817, changing her Federal Employees' Group Life Insurance (FEGLI) coverage to basic life, standard option A, additional coverage option B at the rate of five times her annual basic salary, and family option C (5 multiples). The additional coverage became effective April 23, 2000. Due to an administrative error, the change in her FEGLI coverage was not properly processed and the deductions for the increased premiums were not withheld from her pay. As a result, insufficient amounts were withheld for FEGLI coverage from April 23, 2000, through September 3, 2005, causing an overpayment of \$3,934.92.

The employee requested waiver of the debt from the Defense Finance and Accounting Service (DFAS). The employee argued, and has continued to argue, that the debt was not caused by an omission of the agency to timely process the new FEGLI election coverage. Rather, she contends that the agency did review and process the FEGLI election form the employee submitted on June 11, 1999, and by an overt and affirmative action an agency official denied coverage. Therefore, the employee contends she did not have the increased FEGLI coverage during the period the debt is alleged to have accrued. The evidence to support this contention is the handwritten notation at the bottom of the form by this alleged agency official stating "inactive 2-11-00" and the individual's initials. Thus, the employee argues that since an affirmative action was made to deny coverage, there is no debt for that period, until she submitted a new election which was approved on September 1, 2005.

DFAS denied waiver of the debt, citing 5 U.S.C. § 5584, which provides authority for waiving claims for erroneous payments made to or on behalf of specified federal employees if collection of the claim would be against equity and good conscience and not in the interest of the United States. Generally, these criteria are met by a finding that there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the claimant or any other person having an interest in obtaining a waiver of this claim. The standard used to determine fault is a reasonable person. DFAS determined that a reasonable person in similar circumstances would have known that she was receiving payments in excess of her entitlements because she should have expected a reduction in net salary to pay for the increased insurance coverage. DFAS noted that administrative error alone is not a sufficient basis for granting error. Additionally, DFAS noted prior decisions of this Board that have consistently reinforced the employee's responsibility to review materials provided to her (*e.g.*, Leave and Earnings Statements) in order to ensure her pay and benefits are recorded correctly. DFAS determined since the employee had been provided these documents, she was not without fault in the accrual of the debt.

The employee appealed to our Office, and made the same arguments she had presented to DFAS. The adjudicator again noted that administrative error alone is not sufficient basis for granting waiver. The adjudicator outlined the pay history, FEGLI coverage, and premium increase for the period in question to show that the employee was receiving FEGLI coverage, just not the increase she requested. Since she had requested an increase in coverage, and no concurrent increase in FEGLI premiums took place, the employee should have reasonably known that she was receiving erroneous payments. The adjudicator stressed that counter to the employee's understanding, she was covered by the requested additional coverage and her family or dependents would have received the benefit of that coverage had they filed a claim.

The employee requested reconsideration and continues to insist that the increased coverage did not take effect. She shows as proof her SF 50s that cover the 2000-2005 timeframe which do not show the additional coverage. She offers a statement from her Human Resources Agency supporting waiver as the insurance was not processed in a timely manner and by regulation had to be processed retroactively. She offers the name of an individual in the Army Benefits Center who according to the employee stated that the FEGLI would not have honored the 1999 form for payment to her beneficiaries, but there is no statement from the individual. She, again, is very insistent that she did not have the additional coverage. She supports this with the name of an OPM FEGLI Manager, who in reviewing her SF 50s verified she did not have the coverage.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

We recognize that the presence or absence of SF 50s indicating FEGLI coverage or waiver of coverage often is a factor in determining whether waiver of indebtedness is appropriate in cases like this one. *See* the Comptroller General's decision in B-261484, June 30, 1995. However, the gravamen of this case is whether the employee was partially at fault, along with the government. In this case, we have an experienced employee who should understand that once the request for FEGLI coverage is made, the government cannot "deny" it by putting a date and initials on her election form. When her premiums did not increase, she knew or reasonably should have known that she was receiving erroneous net salary payments. Waiver is an equitable remedy and is not available to the party who shares part of the fault. Finally, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting a waiver. *See* Department of Defense Instruction 1340.23, *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances* [hereinafter Instruction], ¶ E4.1.3 (February 14, 2006).

Additionally, the employee had the benefit of the life insurance for the period in question, regardless of whether she subjectively believed she was not receiving coverage. While this Board may not be able to change the opinion of the employee, case law and precedent are clear that once she requested the coverage, it was in effect until she requested a change. She did not request a change until September 2005; therefore the coverage requested on June 11, 1999, and effective April 23, 2000, would have been paid to her family or dependents had they filed a claim. It is not inequitable for an employee to pay for coverage which she elected. If the employee had died during the period involved, her beneficiary would have received the life insurance (minus the premiums) even though no premiums were deducted from her salary. *See* DOHA Claims Case No. 03101402 (October 20, 2003). Nevertheless, if the employee still believes that the government was not bound to honor her June 11, 1999, FEGLI coverage request, she has the right to claim a refund of the satisfaction of her indebtedness with the employing agency, and/or appeal to the Office of Personnel Management.

Conclusion

The employee's request for reconsideration is denied, and we affirm the August 31, 2010, appeal decision. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

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Jean E. Smallin
Member, Claims Appeals Board

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