

KEYWORDS: waiver of indebtedness; FEGLI

DIGEST: Waiver is appropriate when an employee reasonably relies on a consistent series of *Notification of Personnel Actions* (SF-50s), which appear to be correct but are later found to be erroneous.

CASENO: 2010-WV-111002.2.

DATE: 12/23/2010

DATE: December 23, 2010

In Re:)
 [REDACTED]) Claims Case No. 2010-WV-111002.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is appropriate when an employee reasonably relies on a consistent series of *Notification of Personnel Actions* (SF-50s), which appear to be correct but are later found to be erroneous.

DECISION

An employee requests reconsideration of the November 15, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-111002. In that decision, DOHA allowed, in part, waiver of collection of the overpayment of salary in the amount of \$8,514.71, but denied waiver of \$4,740.55.

Background

The employee was a participant in the Federal Employee's Group Life Insurance (FEGLI) coverage plan. Effective July 28, 2002, the employee's work hours changed from full-time to part-time or intermittent hours. A *Notification of Personnel Action* (SF-50) issued on July 29, 2002, reflected that effective July 28, 2002, the employee was ineligible for FEGLI coverage due to the change in her work hours. However, the Defense Finance and Accounting Service (DFAS) later determined that the employee was still eligible for FEGLI coverage because she had no break in service. As a result, the employee became indebted to the government in the amount of \$13,255.26 for FEGLI premiums from July 28, 2002, through January 30, 2010.

The DOHA adjudicator upheld DFAS' recommendation that the employee accepted the overpayments resulting from FEGLI premiums not being deducted from her salary in good faith during the period July 28, 2002, through February 3, 2007, and during the period June 10, 2007, through July 5, 2008. During these periods, the employee's work hours were changed from full-time to part-time or intermittent. Therefore, the adjudicator concluded that she reasonably may not have been aware that she was receiving erroneous payments. The adjudicator waived the collection of these overpayments in the amount of \$8,514.71. However, the adjudicator denied waiver of the overpayments the employee received when she returned to full-time hours after she had been working part-time or intermittent hours (*i.e.*, the periods February 4, 2007, through June 9, 2007, and July 6, 2008, through January 30, 2010). The adjudicator denied waiver of these overpayments in the amount of \$4,740.55. The adjudicator found that since initially the employee was eligible for and received FEGLI coverage as a full-time employee, when she later returned to full-time status, she reasonably should have been aware that she was being overpaid when FEGLI premiums were not deducted from her salary.

The employee requests that we reconsider the decision of the adjudicator on the grounds that she should not have to repay the \$4,740.55 when the error was caused by the Civilian Personnel Operations Center (CPOC). She states that CPOC ruled her ineligible for FEGLI. She includes copies of a series of SF-50s from July 28, 2002 through January 3, 2010, reflecting that ineligibility. She also submits a letter from the CPOC Director supporting her position. In the CPOC Director's letter, he also refers to the employee's SF-50 history, and states that she had no reason to believe she was eligible for FEGLI, nor to question the human resources staff's determination that she was not eligible for FEGLI during the periods of overpayment.

Discussion

Under 5 U.S.C. § 5584, we have authority to waive 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, fault, misrepresentation or lack of good faith on the part of the employee. A waiver is usually not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and set aside the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* DoD Instruction 1340.23

(Instruction) ¶ E4.1.4.

In this case, the overpayments were the result of an administrative error, and there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee. However, the adjudicator found that since the employee had received FEGLI coverage when she was in a full-time status prior to the start of the debt, she reasonably should have been aware that she was being overpaid when she returned to full-time status and FEGLI premiums were not deducted from her salary. We disagree. As stated above, effective July 28, 2002, the employee's work hours changed from full-time to intermittent hours. As a result, an SF-50 was issued reflecting that effective July 28, 2002, the employee was ineligible for FEGLI coverage due to the change in her work hours. The record reflects that on four occasions when there was a change in her work hours after July 2002 (September 2003, February 2007, June 2007, and July 2008), the employee received SF-50s reflecting that she was ineligible for FEGLI coverage.¹ During the two periods of time in question (February 4, 2007, through June 9, 2007, and July 6, 2008, through January 30, 2010), when the employee returned to full-time work hours, she received SF-50s reflecting the change in her work hours and her ineligibility for FEGLI coverage. These facts all support the employee's position that she reasonably believed that she was not eligible for FEGLI coverage when she returned back to a full-time work status. Our Office and the Comptroller General have held that waiver may be appropriate when an employee receives pay in accordance with an SF-50 which appears to be correct on its face but is later found to be erroneous. In that circumstance, it was reasonable for the employee to accept pay in accordance with the SF-50. *See* DOHA Claims Case No. 09080501 (August 17, 2009); DOHA Claims Case No. 97082535 (November 4, 1997); and B-260843, Oct. 24, 1996. Based on the series of SF-50s and other documentation submitted by the employee, it is our view that she received the overpayments in good faith. Accordingly, we waive the additional \$4,740.55.

Conclusion

The employee's request for relief is granted. The debt is waived in the additional amount of \$4,740.55. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Acting Chairman, Claims Appeals Board

¹Specifically, in Block "27. FEGLI" of the SF-50 effective February 11, 2007, is listed the code "AO," and next to the code, "Ineligible."

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board