

DATE: May 2, 2013

In Re:)

[REDACTED])

) Claims Case No. 2013-WV-020601.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

An employee of the U.S. Army requests reconsideration of the February 22, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-020601. In that decision, DOHA waived \$29.20 of the overpayment and denied waiver of \$6,115.80.

Background

On February 23, 2001, while employed by the Army, the employee initiated Standard Form (SF) 2817 electing Federal Employees' Group Life Insurance (FEGLI) coverage, basic life plus additional option B at the rate of five times his salary, and family option C at the rate of five multiples. Proper deductions for FEGLI were withheld from the employee's salary through July 13, 2002. On July 14, 2002, the employee elected to be placed in a military leave without pay (LWOP) status, effective July 15, 2002. Since he was in a LWOP status, his FEGLI coverage continued for 12 months at no cost to him due to his call to active duty service.

Effective July 1, 2011, the employee returned to his civilian position with the Army. As a result, the employee's FEGLI coverage should have been reactivated. During the pay period ending (PPE) July 2, 2011, FEGLI premiums in the amount of \$293.35 should have been deducted from the employee's salary. However, due to an administrative error, only \$264.15 was withheld from the employee's salary during this period, resulting in an overpayment of \$29.20 (\$293.35-\$264.15). In addition, due to an administrative error, no FEGLI premiums were deducted from the employee's salary from July 3, 2011, through May 5, 2012, causing him to be overpaid \$6,115.80. As a result, he was overpaid \$6,145.00 (\$29.20 + \$6,115.80).

The employee requested waiver of the overpayment stating that during the period July 1, 2011, through May 5, 2012, his FEGLI coverage was in a waived status, and therefore, if he had died during this period, no insurance benefits would have been paid. The Defense Finance and Accounting Service (DFAS) denied his request for waiver. Upon appeal to our Office, the DOHA adjudicator disagreed with a complete denial and granted waiver in part in the amount of \$29.20. The adjudicator found that the employee reasonably may not have been aware that his FEGLI premiums were miscalculated during the PPE July 2, 2011. However, the adjudicator denied the remainder of the overpayment because the employee was on notice with the receipt of his leave and earnings statements (LES) that no premiums were being withheld for his FEGLI coverage. Although the employee stated that he made a conscious decision to voluntarily leave his FEGLI coverage in a waived status, the adjudicator noted that there was nothing in the record reflecting that the employee requested his FEGLI remain in a waived status or that his military-related life insurance policy was still valid and deemed an optional and acceptable alternative during the debt period.

In the employee's reconsideration request, he attaches a Standard Form (SF) 50, *Notification of Personnel Action*, issued on July 1, 2011, reflecting that his FEGLI coverage as an employee ended effective July 15, 2003, due to completion of 12 months in a nonpay status. The SF-50 reflects his FEGLI status as "BO waived."¹ The employee states that he learned sometime in 2004 that his FEGLI status was never converted to "BO waived," and continued on in a "Z5 active"² status. He states that he struggled continuously with the Civilian Personnel Advisory Center (CPAC) and DFAS to change his FEGLI status to "BO waived." He states that he submitted two SF-2817s while he was in a military LWOP status to request the waived status of his FEGLI, but no action was taken. He states that he began to accumulate an indebtedness for premium payments made by DFAS during this period. He states that it was not until July 1, 2011, when he returned from military LWOP to a civilian pay status that the CPAC processed his SF-50 changing his FEGLI status to "BO waived." He states that he completed an SF-2817 on the advice of CPAC, requesting the retroactive change to eliminate his indebtedness while on military LWOP and with the understanding that his FEGLI status would remain "BO waived," until his other extended post-military service insurance expired. Therefore, he states that he had no reason to question why FEGLI premiums were not being deducted from his pay since his FEGLI status was "BO waived," retroactive to July 2003.

¹"BO waived" means that the employee's FEGLI coverage has been waived/cancelled. If an employee's Basic FEGLI coverage is waived/cancelled, all forms of FEGLI are waived/cancelled.

²"Z5 active" means Basic + Option B (5x) + Option A + Option C (5x).

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 interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review those documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will not be granted. Thus, if an employee is given a Standard Form 50 showing he has FEGLI coverage, but his leave and earnings statements (LES) show that the necessary insurance premium deductions are not being made, the employee has notice of an error and is ordinarily considered to be at least partially at fault if he fails to take corrective action. *See* 65 Comp. Gen. 216 (1986).

In this case, we do not believe fault may be imputed to the employee. There are two SF-50s in the file reflecting the employee's FEGLI status as "BO waived." The first SF-50 was issued on July 1, 2011, returning the employee to duty effective July 1, 2011. The second SF-50 was issued on July 1, 2011, changing the employee's FEGLI status effective July 15, 2003, to "BO waived." Therefore, we believe the employee had no reason to question that deductions were not being made to his pay for FEGLI coverage. We believe that the above facts clearly support a finding that the employee was not at fault in accepting the overpayments. We find that collection of the debt would be against equity and good conscience and not in the best interests of the United States.

Conclusion

For the reasons stated above, we hereby waive \$6,115.80. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board