

DATE: May 27, 2015

In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-042203.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Erroneous under-deduction of an employee's Federal Employee's Group Life Insurance (FEGLI) premiums resulted in a debt to the government. The employee contends that he did not sign up for the increase in coverage on-line, but was merely checking to determine what the price increase might be for the increase. Nevertheless, the election was filed and electronically signed, and since the employee received the benefit of the coverage, waiver of the debt under 5 U.S.C. § 5584 is not appropriate.

DECISION

A U.S. Army employee requests reconsideration of the April 28, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-042203. In that decision, this Office denied waiver of erroneous salary payments that should have been deducted for FEGLI premiums in the amount of \$19,400.02.

Background

On September 27, 2004, the employee electronically initiated the FEGLI (Federal Employee's Group Life Insurance) 2004 Open Season Election Form (FE-2004). He elected to change his FEGLI coverage from basic only to basic life and additional option B at the rate of four times his salary effective September 4, 2005. However, due to an administrative error, the change was never processed. As a result, insufficient amounts were withheld for FEGLI coverage from the employee's salary during the period September 4, 2005, through August 10, 2013, causing an overpayment of \$19,400.02.

The employee states that he was unaware of the error in his FEGLI coverage until July 2013 when he was applying for retirement. He states he was told by a Human Relations Specialist from the Army Benefits Center (ABC) that ABC had found an unprocessed change of FEGLI coverage in his file. He states that he told her to just tear it up. He states that the Specialist told him she could not tear it up; that once a request had been received, it had to be processed. The employee states that he had no recollection of requesting this change in 2004. He states that there was no corresponding SF50, *Notification of Personnel Action*, changing his health insurance coverage. He states that he vaguely remembers investigating increased coverage in 2004, but he believes he was only trying to determine what the additional FEGLI coverage would cost. He states he did not realize that he actually requested the increase. He states that since he was unaware he had increased his FEGLI, that in October 2004 he purchased term life insurance from his local credit union. He states he believes this is a malfunction of the online processing software, or an oversight of processing by the ABC. However, either way he contends that he should not have to pay for something that was not his fault.

Decision

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and 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. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver of the claim.

As the statutory language indicates, whether to grant waiver under 5 U.S.C. § 5584, is not decided simply as a matter of right whenever an employee innocently receives pay to which he is not entitled, but is to be decided on the principles of equity and fairness presented in each case. In the appeal decision, the adjudicator pointed out that the employee acknowledged filling out the FE-2004 to see how much an increase in his coverage would cost. While the employee contends that he did not realize that he filled out the election, the adjudicator noted that the FE-2004 was electronically signed by the employee. Also, the adjudicator pointed out that the Instructions at the top of the FE-2004 stated that the employee must give all parts of his completed form to his employing office and that his employing office will complete Part 6 of the FE-2004 and return a copy (or its electronic equivalent) to the employee. Thus, the employee had to submit the FE-2004 to his employing office, which the adjudicator noted the employee did on the same date he signed it. In this regard, Part 6 of the FE-2004 reflects the address of the employee's employing office, a received date of September 27, 2005, an effective date of September 4, 2005, and an electronic signature of ABC. The adjudicator also noted that it became part of the employee's Official Personnel File (OPF) because ABC found the document while processing his retirement paperwork. The adjudicator determined that the employee should have expected his FEGLI coverage to increase, and should have questioned why it did not after the change took place.

In his request for reconsideration, the employee is adamant that he did not fill out the FE-2004, that all he has admitted to is investigating the increased cost of coverage using the online software. He submits that it is obvious that the computer generated the FE-2004 and stamped the

electronic signature. He states it is untrue that he sent the form to his employing office; the computer sent the form and stamped the date received. He points out that he was employed in Maryland and the form was sent to ABC in Fort Riley, Kansas, on the same day the form was created. He also questions the signature of the authorizing official as it only states, "Signed Army Benefits Ce." Therefore, the employee states that he believes the computer also signed for ABC. The employee submits he never had any information to be aware that his insurance coverage had increased.

Despite the protests of the employee, it is unlikely that the computer took all these actions without the direction of the employee. Also, 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 life insurance for the period in question, regardless of whether he believed he was receiving the coverage. Case law and precedent are clear that once a change is requested, it is in effect until another change is requested. It is not inequitable for an employee to pay for coverage which he elected. If the employee had died during the period involved, his beneficiary would have received the life insurance (minus the premiums) even though no premiums had been deducted from his salary. *See* DOHA Claims Case No. 2010-WV-061002.2 (September 23, 2010), and DOHA Claims Case No. 03101402 (October 20, 2003). Nevertheless, if the employee still believes that the government was not bound to honor his September 27, 2005, FEGLI coverage request, he has the right to claim a refund of the satisfaction of 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 April 28, 2015 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///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Gregg A. Cervi
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board