

October 20, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03101402

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee's life insurance premiums were erroneously under-deducted from his salary resulting in a debt to the government. The employee was aware of the error because he had noticed the under-deduction on his Leave and Earnings Statements. Because the employee knew of the error and received the benefit of the life insurance coverage, waiver of the unpaid premiums is not appropriate.

### DECISION

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 03080411, dated August 7, 2003, wherein our Office denied an employee's request for waiver of a \$309.98 debt to the government which arose when life insurance premiums were not correctly deducted from his salary.

### Background

The record shows that while the individual was employed with the Marine Corps Air Station El Toro, he elected Federal Employees' Group Life Insurance (FEGLI) coverage, basic life, standard option, and additional option at the rate of two times his salary. In accordance with his election, the proper deductions were withheld from his salary, until he was laid off from his position on October 30, 2000.

On July 2, 2001, the individual accepted a position at the Camp Pendleton Marine Corps Air Station, and he submitted the proper documentation to continue his FEGLI coverage. However, due to an administrative error his employer only withheld basic life insurance premiums from his salary from July 2, 2001, through February 9, 2002. As a result, the individual became indebted to the government in the amount of \$309.98 for cost of his additional life insurance coverage.

The individual stated that he immediately noticed from his Leave and Earnings Statements (LESSs) that his employer was only deducting premiums for the basic coverage. However, he did not pursue the matter at that time because he was in the process of moving and resolving other problems.

In the Settlement Certificate, our Office denied waiver with respect to the individual's \$309.98 debt because he knew from his LESSs of the existence of an error. On appeal, the employee continues to seek waiver of the \$309.98 debt based upon his contention that he did not think he was receiving the insurance coverage he had elected because he was not paying for it.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments 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. The standard we use to determine fault is whether a reasonable person would or should have known that he was receiving pay in excess of his entitlements. <sup>(1)</sup> *See Standards for Waiver*, 4 C.F.R. § 91.5 (1996). Our decisions and those of the Comptroller General indicate that waiver is not appropriate, in cases such as this, where the employee is provided information such as LESSs which contain sufficient information to indicate the existence of error. *See* DOHA Claims Case No. 02040401 (May 21, 2002) and 62 Comp. Gen. 608, 611 (1983).

While we agree that the overpayments were the result of administrative error, that fact by itself does not entitle the employee to waiver. Waiver is an equitable remedy, and equity is not available to a party who is not entirely without fault. Since the employee in the case before us is not entirely free of fault, waiver cannot be granted. *See Id.* . Additionally, we note that the employee had the benefit of the life insurance coverage for the period in question, regardless of whether he subjectively believed he was not receiving that coverage. Prior decisions indicate that it is not inequitable for an employee to pay for coverage which he elected. Contrary to the employee's belief, his beneficiary would have received the life insurance if he had died during the period after he elected coverage, even though no premium payments were deducted from his salary. Therefore, waiver of the premiums is not appropriate. *See Id.*

### **Conclusion**

We affirm the Settlement Certificate.

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/s/  
Michael D. Hipple  
Chairman, Claims Appeals Board

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/s/  
William S. Fields  
Member, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_  
Jean E. Smallin  
ember, Claims Appeals Board

1. There is no indication in the record of any fraud, misrepresentation, or lack of good faith on the part of the employee.