



## **Background**

On October 4, 1988, the employee elected Federal Employee Group Life Insurance (FEGLI). The employee's coverage became effective October 4, 1988, and proper deductions were withheld from his salary through November 29, 2003. On November 21, 1989, the employee elected Mail Handlers Federal Employee's Health Benefits (FEHB) coverage. The employee's coverage became effective January 14, 1990, and proper deductions were withheld from his salary through November 29, 2003. From November 30, 2003, through July 9, 2005, the employee's FEGLI and FEHB premiums were paid by the Office of Workers' Compensation Program (OWCP) due to a work-related injury. On July 11, 2005, the employee returned to work. Beginning on that date, FEGLI and FEHB premiums should have been deducted from his salary. However, due to an administrative error, no FEGLI and FEHB premiums were withheld from his salary during the period July 11, 2005, through July 22, 2006, causing an overpayment of \$9,836.75.

Our Office subsequently denied waiver of the overpayment. In the employee's request for reconsideration, he states that the overpayment was caused by an administrative error that occurred after he returned to work. The employee states that he immediately contacted his supervisor and anyone else he thought could possibly correct the error and start deducting the FEGLI and FEHB premiums from his salary. He continued contacting people for almost a year until the error was resolved.

## **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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. The fact that an erroneous payment is made as a result of administrative error on the part of the Government is not sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. A person who receives payments erroneously from the Government acquires no right to the money. Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1. When an employee is aware that he is receiving overpayments, collection of the excess amounts is not against equity and good conscience and is in the best interest of the United States. *See* DOHA Claims Case No. 98040111 (July 8, 1998).

In this case, the employee states that he was aware he was receiving overpayments. Although he acted properly in notifying the appropriate officials and continuing to try to resolve the matter, he did not acquire title to the amounts paid to him, especially since he knew he was being overpaid. He should have held the amounts for subsequent repayment. In these circumstances, waiver is not appropriate.

In addition, as noted by the DOHA adjudicator in the appeal decision, the employee had

the benefit of coverage for both the FEHB and the FEGLI during the period of overpayment. It is not inequitable for an employee to pay for coverage which he elected. *See* DOHA Claims Case No. 03101402 (October 20, 2003).

### **Conclusion**

The employee's request for relief is denied, and we affirm the April 20, 2007, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board