

KEYWORDS: waiver of indebtedness-partial fault of applicant

DIGEST: An employee who had made a written request for coverage under Federal Employee’s Group Life Insurance (FEGLI) changed his mind about such coverage. Considering the language on the insurance application form that the employee signed and other factors, the employee should have questioned whether his verbal direction to personnel representatives to cancel his coverage was effective in properly waiving insurance coverage even though all except one Standard Form 50 issued after that point indicated that he had waived his coverage. The member was still covered by the life insurance that his beneficiaries could have claimed if he had died before the failure to collect premiums had been discovered. In such circumstances, it is not inequitable to collect the premiums even though the government had also erred by not collecting them for several years.

CASENO: 07091307

DATE: 9/17/2007

DATE: September 17, 2007

)	
In Re:)	
[REDACTED])	Claims Case No.07091307
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who had made a written request for coverage under Federal Employee’s Group Life Insurance (FEGLI) changed his mind about such coverage. Considering the language on the insurance application form that the employee signed and other factors, the employee should have questioned whether his verbal direction to personnel representatives to cancel his coverage was effective in properly waiving insurance coverage even though all except one Standard Form 50 issued after that point indicated that he had waived his coverage. The member

was still covered by the life insurance that his beneficiaries could have claimed if he had died before the failure to collect premiums had been discovered. In such circumstances, it is not inequitable to collect the premiums even though the government had also erred by not collecting them for several years.

DECISION

A retired Air Force employee requests reconsideration of the September 5, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07082702. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of collection of the overpayment of salary that the employee received totaling \$3,168.80.

Background

The record shows that on June 1, 1995, the employee initiated Standard Form (SF) 2817 electing Federal Employee's Group Life Insurance (FEGLI) basic life coverage, a coverage that became effective June 11, 1995. However, due to administrative error, DFAS failed to deduct premiums from the employee's salary for this coverage from June 11, 1995, through January 20, 2007. Since DFAS no longer had documentation supporting the overpayment for the period June 11, 1995, through January 6, 1996, it did not hold him liable for that period. It did hold him liable for the period January 7, 1996, through January 20, 2007, during which it overpaid the employee \$3,168.80 because it failed to deduct for the premiums.

In applying for waiver of his debt, the employee acknowledged that in the summer of 1995, he signed up for FEGLI. But he states that he visited his personnel office in July 1995 and told unidentified representatives to cancel it because he did not want FEGLI if he had to pay for it. The employee contends that a representative assured him that since no payroll deductions had been made, personnel officials would cancel the insurance. The employee also stated that "[i]n all of my personnel records from 1995 on, there is only one SF50 in all of my civilian personnel records showing FEGLI election, and every single other FS [sic] 50 both before and since that one in 1995 shows that I 'waived all life insurance.'" DOHA's adjudicator considered the employee's statement, and concluded that the member did not have a reasonable basis for believing that he did not have life insurance. The adjudicator cited section one of the SF 2817 that the member signed that stated as follows: "By law, a person who is not excluded from coverage automatically has Basic Life Insurance, unless he or she waives all coverage." Section five of the form stated: "If you want NO life insurance coverage at all, sign and date below" and indicated that "waiver of all life insurance coverage" is accomplished by completing that section with a signature and date.

In his request for reconsideration, the employee argues that he reasonably believed that his request for coverage had never been processed. No payments were withheld from his salary,

and he had no way of knowing that the insurance was in effect since every SF50 after that showed that he did not have FEGLI coverage. The employee cannot understand why the problem was never identified in the ensuing years and believes that it is inequitable to hold him liable after all that time when the government committed error.

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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. In this case, the adjudicator found the employee's signature on a SF 2817 which contained the language described above to be persuasive of employee's partial fault in this matter. Based on the record evidence including the nature of the employee's actions in canceling the insurance and the language on the SF 2817, the adjudicator reasonably concluded that the employee had sufficient information that he should have pursued the matter further before concluding that he was no longer obligated for payments for FEGLI.

We recognize that the presence or absence of SF 50s indicating FEGLI coverage or waiver of coverage often is a factor in determining whether waiver of indebtedness is appropriate in cases like this. *See* the Comptroller General's decision in B-261484, June 30, 1995. However, the gravamen of this case is whether the employee was partially at fault, along with the government. In this case, an employee as experienced as the one involved here knows or should know that he cannot cancel his written request for FEGLI through mere verbal assurances from personnel representatives that his written request would not be processed. Waiver is an equitable remedy, and it is not available to a party who shares part of the fault. *See* DOHA Claims Case No. 03101402 (October 20, 2003). Additionally, the employee had the benefit of the life insurance for the period in question, regardless of whether he subjectively believed he was not receiving coverage. 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 were deducted from his salary. *See Id.*

Conclusion

The employee's request for relief is denied, and we affirm the September 5, 2007, appeal decision. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board