

KEYWORDS: waiver of indebtedness; FEGLI

DIGEST: Erroneous under-deduction of an employee's Federal Employees' Group Life Insurance (FEGLI) premiums resulted in a debt to the government. Since the employee knew or should have known that there was an error and since he received the benefit of the FEGLI coverage, waiver of the debt is not appropriate.

CASENO: 09032306

DATE: 4/15/2009

DATE: April 15, 2009

In Re:)
) [REDACTED]
))
) Claims Case No. 09032306
))
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Erroneous under-deduction of an employee's Federal Employees' Group Life Insurance (FEGLI) premiums resulted in a debt to the government. Since the employee knew or should have known that there was an error and since he received the benefit of the FEGLI coverage, waiver of the debt is not appropriate.

DECISION

An employee requests reconsideration of the February 26, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08121201. 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 \$21,182.41.

Background

The record shows that on February 21, 2002, the employee initiated Standard Form (SF) 2817 (*Life Insurance Election*) changing his Federal Employees' Group Life Insurance (FEGLI) coverage to basic life, standard option A, additional coverage option B at the rate of two times his annual salary and family option C (five multiples). The additional coverage became effective February 28, 2002, and the proper FEGLI deductions (code N5) were withheld from his salary through October 19, 2002. Effective October 30, 2002, a *Notification of Personnel Action* (SF-50) was issued which changed the employee's duty station. Due to an administrative error, the SF-50 erroneously also changed the employee's FEGLI coverage to basic life only (code C0) in the Defense Civilian Personnel Data System (DCPDS), but the payroll system continued to correctly reflect the employee's FEGLI elections as code N5. As a result, the employee's FEGLI premiums were correctly deducted from his salary for basic life, standard option A, additional coverage option B at the rate of two times his annual salary, and family option C (five multiples) coverage from the pay period ending November 2, 2002, through October 2, 2003. Due to a realignment process in DCPDS on October 5, 2003, his FEGLI code was erroneously changed from code N5 in the payroll system to basic coverage during the period October 5, 2003, through December 22, 2007, causing an overpayment of \$21,182.41. The employee was notified of the error by letter dated April 11, 2008.

In his waiver request, the employee acknowledged that he filled out the forms for FEGLI coverage. However, he stated that he did not notice a change in his net pay at the time the error occurred. He states there was only an increase of \$90.03 in his net pay of \$4,000. The employee suggested that waiver should be granted because the overpayment resulted from an administrative error. The DOHA adjudicator concluded that the \$90.03 increase in the employee's net pay should have alerted him to the fact that there was an error in his pay. In reaching this conclusion, the adjudicator noted that on the employee's leave and earnings statement (LES) for the pay period ending October 4, 2003, the employee's net pay was \$4,131.06. Two weeks later his net pay was \$4,221.09, an increase of \$90.03. At the same time, the employee's deduction for FEGLI changed from \$111.78 to \$21.75, a decrease of \$90.03. The adjudicator found that had the employee reviewed his LES, presumably the overpayment would have been discovered at that time, thereby preventing the perpetuation of the error.

In his request for reconsideration, the employee argues that DOHA's appeal decision only addressed the question of whether liability for the overpayment exists and did not address his argument about the amount of his overpayment liability. The employee states that after filing his

original waiver request, he has become aware of the payroll deduction history in his case. He states that payroll deductions for FEGLI options A, B and C amounting to \$90.03 were erroneously dropped from his pay beginning in pay period ending October 18, 2003. He states that the premiums for options A, B and C more than doubled beginning in pay period ending January 24, 2004, to \$194.20 due to the employee's reaching age sixty. He states that these premiums increased to \$201.40 beginning in the pay period ending January 20, 2007. He contends that while he originally selected options A, B and C at premiums of \$90.03 per month, he was never aware that the premiums doubled at age sixty because no deductions were being made from his pay and he did not receive any other notification. He argues that he never had an opportunity to determine whether he wanted to continue coverage at the higher cost. He suggests recalculation of his liability in one of two ways. First, he suggests that he should only be liable for the failed deductions at \$90.03 per pay period that occurred before the premium increase, so he would be liable for the pay period ending October 18, 2003, through January 10, 2004, for the amount of \$630.21. Alternatively, he suggests that he only be held liable at the rate of \$90.03 per pay period for the entire period in question in the amount of \$9,903.30.

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. The fact that an erroneous payment is made as a result of administrative error on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* DoD Instruction 1340.23 (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 ¶ E4.1.1. 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 LESs which contain sufficient information to indicate the existence of an error. *See* DOHA Claims Case No. 03101402 (October 20, 2003); DOHA Claims Case No. 02052003 (July 23, 2002); DOHA Claims Case No. 02040401 (May 21, 2002); B-243885, Aug. 27, 1991; B-211932, Oct. 20, 1983; B-203458, Sept. 29, 1981; and B-190564, Apr. 20, 1978.

In this case, the overpayments were the result of administrative error. However, 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 partially at fault. The employee's net pay increased significantly, by \$90.03, when the overpayment began during pay period ending October 18, 2003. This was reflected on the employee's LESs. As pointed out by the DOHA adjudicator in the appeal decision, if the employee had carefully reviewed his LESs, he would have discovered the overpayment at that time, thereby preventing the perpetuation of the error. Since the employee in the case before us is not entirely without fault, waiver cannot be granted. *See* DOHA Claims Case No. 02040401, *supra*.

As we understand the employee's position, he believes that it is inequitable for him to have to repay the higher premium amount because he was not aware that the FEGLI premiums doubled at age sixty. He states that he had no way of knowing the premiums increased because no deductions were being made from his pay and he did not receive any other notification. However, we note that the employee had the benefit of the FEGLI coverage during the period in question. We have consistently held that it is not inequitable for an employee to pay for coverage which he elected. Therefore, waiver of the premiums is not appropriate. See DOHA Claims Case No. 03101402, *supra*, and B-203458, *supra*.

Conclusion

The employee's request for relief is denied, and we affirm the February 26, 2009, 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: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board