

KEYWORDS: waiver of indebtedness; FEGLI

DIGEST: An employee, previously a reemployed annuitant, was converted to an excepted position effective November 28, 2007. As a result of this conversion, the employee became eligible for Federal Employees' Group Life Insurance (FEGLI) coverage. A FEGLI election had to be completed within 31 days of the effective date of the employee's appointment. Since no selection was made regarding FEGLI until May 2008, basic FEGLI coverage was automatically started retroactive to the pay period ending December 8, 2007. Since the employee had the benefit of coverage from December 8, 2007, through May 10, 2008, waiver for the indebtedness of premiums, \$204.30, is not appropriate.

CASENO: 09062906

DATE: 7/7/2009

DATE: July 7, 2009

_____)
In Re:)
 [REDACTED]) Claims Case No. 09062906
)
Claimant)
_____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee, previously a reemployed annuitant, was converted to an excepted position effective November 28, 2007. As a result of this conversion, the employee became eligible for Federal Employees' Group Life Insurance (FEGLI) coverage. A FEGLI election had to be completed within 31 days of the effective date of the employee's appointment. Since no selection was made regarding FEGLI until May 2008, basic FEGLI coverage was automatically started retroactive to the pay period ending December 8, 2007. Since the employee had the benefit of coverage from December 8, 2007, through May 10, 2008, waiver for the indebtedness of premiums, \$204.30, is not appropriate.

DECISION

A Department of Defense employee requests reconsideration of the June 12, 2009, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09022501. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of \$204.30.

Background

The record shows that the employee, a reemployed annuitant, was converted to an excepted position effective November 28, 2007, by a Notification of Personnel Action (SF 50) issued December 6, 2007. Upon conversion to the excepted position, the employee became eligible for Federal Employees' Group Life Insurance (FEGLI). The SF 50 that documented the conversion action noted in the remarks section, "Eligible for Life Insurance (FEGLI). Election must be completed within 31 days of the date in block 4 . . ." Since the employee made no election regarding FEGLI until May 2008, basic FEGLI coverage began retroactive to the pay period ending December 8, 2007. Due to an administrative error, the deductions for the insurance did not start until the pay period ending May 24, 2008. The employee notified the civilian personnel office that he did not desire the coverage at that time. Consequently, the employee became indebted for basic FEGLI coverage in the amount of \$204.30, for the pay periods ending December 8, 2007, through May 10, 2008.

In applying for waiver of his debt, the employee states that in his previous 25 years of service he had no FEGLI coverage, and he disputes that he had an obligation in 2007 to opt out or cancel an insurance plan he never requested. The employee submits that he never received the SF 50 that contained the instructions in the remarks section until May 2008. He also states that his Leave and Earning Statement (LES) did not reflect any deduction for FEGLI until after he received an email from an employee of DFAS telling him of his enrollment in basic FEGLI coverage and explaining the administrative error regarding the deductions. The employee believes that he could not have known or suspected an error when none of the documentation he received reflected FEGLI enrollment. He waived FEGLI in 1983, and he believed that the 1983 election continued throughout his career. The employee also questions the competence of the employees at DFAS.

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 employee emphasizes that prior to his retirement, he was a senior manager with over

25 years of experience. The employee enclosed the SF 2817, Life Insurance Election Form, that he signed on March 10, 1983. Section one states, "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 states, "If you want NO life insurance at all, sign and date below." This is followed by a blank area for the employee's signature and date. The employee believes that because he signed this form in 1983, there was no further need for him to take any additional action regarding waiver of FEGLI. Therefore, the employee is convinced that the fact that he was enrolled in basic FEGLI is completely due to the incompetence of the employees of DFAS.

The employee was aware that his status changed at a minimum when he received the SF 50 documenting his rehire as a reemployed annuitant. The employee has not presented any documentary evidence that he did not receive or did not have access to the SF 50 which appointed him to the excepted appointment. That SF 50, as noted, directed that an election must be completed within 31 days of the date in block 4. While the employee states he did not believe he had to opt out of the coverage, we believe that since he previously signed documentation indicating otherwise, he should have at least questioned the matter.

The word fault as used in 5 U.S.C. § 5584 has been interpreted as including something more than a proven overt act or omission by an employee. Thus, fault is considered to exist if in light of all the facts it is determined the employee should have known an error existed and taken action to have it corrected. We do not believe it is against equity and good conscience to require the employee to pay for the life insurance protection provided between December 8, 2007, and May 10, 2008, because he had coverage during that period. If the employee had died during the period in question, his beneficiary would have received the proceeds of the life insurance policy, minus the uncollected premiums. Therefore, the employee should pay his debt.

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 12, 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.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

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Jean E. Smallin
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