
In Re:

[Redacted]

Claimant

)

April 20, 1999

Claims Case No. 99040701

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee had participated in the Federal Employee Group Life Insurance (FEGLI) program with only Basic Life Insurance prior to transfer to a new installation. Upon transfer, due to administrative error, premium deductions from his salary were discontinued. The employee states that he met with personnel officials to discuss various discrepancies in his personnel record, and he decided at that time to waive further enrollment in FEGLI. No SF-50 or other written confirmation was issued to document the employee's waiver of insurance. Various SF-50s, including one which contained details of the employee's transfer, noted that the employee remained in the FEGLI with basic life coverage. More than 3 years after transfer, the employee opted to re-institute his participation, and upon review, personnel officials found that he was still enrolled in the FEGLI program because he had not properly waived participation as required in applicable regulations when he was transferred. Under 5 U.S.C. § 5584, it is not proper to waive the indebtedness resulting from the erroneous overpayment of salary (failure to deduct for insurance premiums) over the more than three years following the transfer because the employee is partially at fault in that the SF-50s indicated that he was still enrolled in FEGLI and he failed to bring this to the attention of appropriate officials. Moreover, if the employee had died during the three-year period, his beneficiary would have received life insurance proceeds (minus the unpaid premiums).

DECISION

A Department of Defense employee was transferred from Mare Island Naval Shipyard to an Air Force installation in 1994. While the employee had elected Basic Life Insurance only, under the Federal Employee's Group Life Insurance (FEGLI) program prior to his transfer, no deductions were made from his salary between the effective date of the transfer, February 13, 1994, and November 22, 1997, to cover the premiums. The employee appeals the August 31, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98062902, which denied the employee's request for waiver of the \$867.32 debt due for premiums during that period.

Background

The record shows that while the employee was employed by the Mare Island Naval Shipyard, he elected FEGLI Basic Life Insurance only, and the proper deductions were taken from his salary. A Notification of Personnel Action (SF 50) reflecting the transfer showed in Block 27 "FEGLI" that the employee had elected "Basic Life Only" coverage, and subsequent SF-50s issued from that point through June 1997 show the same coverage. However, the payroll office failed to deduct premiums between February 13, 1994, and January 6, 1996. When the Defense Finance and Accounting Service (DFAS) became responsible for the administration of the employee's finance records in January 1996, it began deducting the premiums. However, the employee initiated an inquiry with his local payroll office, and the deductions were discontinued in April 1996. The employee obtained a refund of the amounts deducted. When the employee's daughter was born in 1997, he sought to cancel what he believed was his 1994 waiver of his FEGLI coverage. After reviewing his record, finance officials apparently advised him that he was still enrolled in the Basic Life Insurance part of FEGLI because he had never properly waived his coverage in 1994. [\(1\)](#)

In prior correspondence, the employee stated that when he transferred in 1994 his FEGLI and Series EE Savings Bond deductions were dropped, and that he thought that his FEGLI was discontinued because no premiums were being deducted. When DFAS began to deduct the premiums in 1996, the employee contends that he immediately inquired about the premium deductions because he considered his enrollment terminated effective upon his transfer in 1994. The employee produced a copy of a "FAX Cover Sheet" from an accounting official at his new installation dated October 16, 1996, indicating that he had canceled his FEGLI, that the cancellation was processed in 1994, and that all premiums collected from the employee in 1996 were refunded to him. On appeal, the employee also indicates that upon his transfer in 1994 he met with personnel officials to discuss numerous errors in his record, and in the process he communicated his intent not to continue his FEGLI. The employee states that no official advised him at that time about the need to complete a form to discontinue FEGLI coverage.

The employee contends that the facts in his situation are distinguishable from the facts in the four Comptroller General decisions that DOHA cited in the Settlement Certificate: *Jeffrey F. Guss*, B-248887, Oct. 2, 1992; *Gordon Field, M.D.*, B-224910, June 22, 1987; *Ann Wildey*, B-204975, Jan. 5, 1982; and *Earl G. Smith*, B-188948, June 15, 1977. In the *Guss*, *Field*, and *Smith* decisions, the employee points out that the applicants should have known that they were erroneously overpaid because not only had they elected FEGLI but they also consciously elected optional coverage. In the *Wildey* decision, the applicant had elected coverage and was notified in several SF-50s that she had it. In contrast, the employee contends that he had not elected coverage and had exercised due diligence at all times. The employee contends that the Comptroller General's decision in *Hollis W. Bowers*, 65 Comp. Gen. 216 (1986), is legal precedent supporting a waiver of his debt.

Discussion

Under 5 U.S.C. § 5584, the government may waive collection of erroneous overpayments of pay or allowances to employees if collection would be against equity and good conscience and not in the best interest of the United States and if there is no indication of fraud, fault, misrepresentation, or lack of good faith. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard we employ to determine fault is whether a reasonably prudent person knew or should have known that he was receiving payments in excess of his entitlements. Our decisions indicate that waiver is not appropriate when the employee has records, which, if reviewed, would indicate an overpayment, and the employee fails to review those documents for accuracy or otherwise fails to take corrective action. *See Ruth Chandler*, B-261484, June 30, 1995; and *Hollis W. Bowers, supra*, at 220.

We appreciate the employee's time and effort in researching this matter. However, we believe that the situation in *Bowers* is distinguishable. In *Bowers*, the issue was whether the amount deducted for premiums appeared reasonable on its face. Where premiums stated on the leave and earnings statement did not appear unreasonable and the employee was not aware that the premiums should have been higher each pay period, the employee is not at fault. *See Ruth Chandler, supra*; and *Gordon Field, M.D., supra*. Here, the issue is whether the employee reasonably believed that he had terminated his coverage, and a cursory review of the successive SF-50s, including one which provided details of the transfer, continued to indicate that he still had basic coverage.⁽²⁾ These incidents should have prompted the employee to take corrective action. Since he did not do so, he is partially at fault. *See Wildey, supra*.

Finally, prior decisions have considered whether the employee enjoyed beneficial coverage during the period when deductions were not made. If the employee had died during the period in question, his beneficiary would have received life insurance proceeds (minus the unpaid premiums). Therefore it is not against equity and good conscience that he pay his debt. *See Smith, supra; Wildey, supra; and Guss, supra*.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. The regulations pertaining to the Basic Life Insurance part of FEGLI are set forth in title 5 of the Code of Federal Regulations (C.F.R.), Part 870. Under 5 C.F.R. § 870.204(a) an insured person may cancel his/her basic insurance at any time by filing a waiver of basic insurance coverage. An employee files with the employing office. The waiver shall be effective and the insurance shall cease at the end of the pay period in which the waiver is properly filed.
2. If, as the employee contends, he did not understand the notation "Basic Life Only," he should have asked for an explanation.