

DATE: February 27, 2015

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In Re: )  
          [REDACTED] ) Claims Case No. 2014-WV-042103.2  
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Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A member did not decline coverage in the Family Servicemembers' Group Life Insurance (FSGLI). It is not against equity and good conscience to deny waiver of the total amount of the premiums because the member had the benefit of the coverage under FSGLI.

**DECISION**

A member of the United States Army requests reconsideration of the January 29, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-042103.

**Background**

Under 38 U.S.C. § 1967, active duty members were automatically enrolled in Family Servicemembers' Group Life Insurance (FSGLI) effective November 1, 2001, unless they elected in writing not to be insured. Since the member did not decline FSGLI coverage in November 2001, FSGLI premiums should have been withheld from her pay. However, due to an administrative error, FSGLI premiums were not withheld from November 1, 2001, through September 20, 2011, causing an overpayment of \$6,890.00.

On appeal, our office denied the member's request for waiver because the member had the benefit of the coverage during the period of overpayment. If the member's insured family member had died during the period in question, the beneficiary would have received the benefit of the FSGL coverage minus the uncollected premiums.

In her request for reconsideration, the member states that she should not be punished and blamed for the Defense Finance and Accounting Service's (DFAS) error. She states that DFAS failed to perform its mission for 13 years by not notifying her of the debt. She states that DFAS just started taking funds out of her pay. She states that DFAS refused to resolve the matter before she retired. As a result, she states that she had to work the last six months of her 30-year career for free. She states that DFAS has a serious and critical internal system problem. She questions whether or not DFAS has provided DOHA with all the copies of her letters. She attaches the four letters she wrote to DFAS. She also points out that although she has been retired for two years, she recently received a new CITI government credit card in the mail. She surmises that DFAS leadership will say they are not accountable or responsible for this error. She contends that she did not receive the benefit of the FSGLI coverage since DFAS's records would have shown that she was not enrolled in the program.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances to a member if collection is against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, misrepresentation, lack of good faith or fault on the part of the member. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not sufficient basis, in and of itself, for granting waiver. See Department of Defense Instruction (Instruction) 1340.23 ¶ E4.1.3. We have consistently held that waiver of a debt which arises due to non-deduction of insurance premiums is not appropriate, since the member received the benefit of the coverage. *See* DOHA Claims Case No. 09091601 (September 30, 2009); DOHA Claims Case No. 08111302 (November 26, 2008); and DOHA Claims Case No. 07031906 (March 27, 2007).

In this case, the error of non-deduction of insurance premiums was caused by DFAS. However, since the member did not decline FSGLI coverage, she was automatically enrolled in FSGLI. If the member's insured family member had died during the period in question, the beneficiary would have received the benefit of the FSGLI coverage minus the uncollected premiums, because there would have been no record that coverage was declined. The member received the benefit of the coverage, and she is liable for the premiums. *See* DOHA Claims Case No. 09091601, *supra*.

The record reflects that the member's appeal file contains all the letters that she submitted with her reconsideration request. While it is unfortunate that DFAS failed to withhold premiums from a member's pay for FSGLI, we cannot grant the member waiver relief in this case for the reasons explained above.

## Conclusion

The member's request for relief is denied, and we affirm the January 29, 2015, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member's request for waiver under 10 U.S.C. § 2774.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board