

July 23, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02052003

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee was overpaid when insufficient amounts were deducted from his pay for Federal Employees' Group Life Insurance. He was provided information which, if reviewed carefully, would have alerted him to the continuing overpayments. Also, the amount of the deduction which was being made was so small for the amount of coverage which he had elected that he should have questioned the amount of the deduction. He is therefore partially at fault in the continued accrual of the resulting debt.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate No. 02031206, dated March 26, 2002, which denied the waiver request of a civilian employee. The employee's debt arose when insufficient life insurance premiums were deducted from his pay.

Background

The employee retired from government service in 1995 and was appointed to another government position on June 23, 1997. Since he took no immediate action regarding Federal Employees' Group Life Insurance (FEGLI), he was enrolled in basic FEGLI (equal to his basic annual salary plus \$2,000) as of the first pay period, which ended July 5, 1997. The basic FEGLI premium of \$17.16 per pay period began to be deducted from the employee's salary as of the first pay period. Effective August 3, 1997, he elected optional FEGLI coverage equal to \$10,000 (Option A) plus five times his annual salary (Option B). While he received an SF-50 documenting his coverage as basic FEGLI plus Options A and B,

only the premiums for the basic coverage were deducted from his salary. Beginning August 16, 1997, an additional \$56.10 per pay period should have been deducted from his pay for the optional coverage. By February 27, 2000, when the error had been discovered and deductions actually began for the optional coverage, the cost of the optional coverage was \$93.75 per pay period. As of February 26, 2000, the amount of the resulting overpayment was \$5,131.05.

The employee states that he was unaware that basic FEGLI coverage was initiated on his behalf as of June 23, 1997. He points out that he did not begin receiving leave and earnings statements (LES) until after he elected optional coverage effective in the pay period ending August 16, 1997. He calls our attention to Comptroller General decision 65 Comp. Gen. 216 (1986). In that decision, the Comptroller General waived a debt arising from the under-deduction of FEGLI premiums, and the employee believes that his situation is comparable to the one in that decision.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances if repayment would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The standard we use to determine fault is whether a reasonable person would or should have known that he was receiving pay in excess of his entitlements. *See Standards for Waiver*, 4 C.F.R. § 91.5 (1996). Our decisions and those of the Comptroller General indicate that waiver is not appropriate if the employee is provided information such as LESs which indicate the existence of error. In such a situation, the employee has a duty to review the LES or other information and is considered to be at fault if he fails to do so. *See* B-224910, June 22, 1987; and B-199262, Mar. 10, 1981.

The employee received an insurance handbook when he was appointed to his position in June 1997. He took no immediate action regarding FEGLI and thus was automatically enrolled with basic coverage. While the employee states that he was unaware that he was automatically enrolled in basic FEGLI, the handbook imparts that information in bold print. While the employee did not immediately begin receiving LESs, he did receive them eventually. A careful review of the first LES would have revealed that a life insurance premium was deducted, and the employee did not complete Standard Form 2817 to elect optional coverage until July 21, 1997, to be effective August 3, 1997. The employee received a Standard Form 50 (SF-50) dated August 3, 1997, documenting his election of optional coverage. ⁽¹⁾ Deductions of premiums for the optional coverage thus should have begun in the pay period ending August 16, 1997, and the total amount deducted for FEGLI should have increased at that time. Careful review of the employee's LESs, when he began receiving them, along with the SF-50 of August 3, would have revealed the error. As a retired federal employee, he should have been able to perform such a review and should have understood the importance of doing so. Since he did not review the information provided him in sufficient detail, he is considered to be partially at fault in the continued accrual of the debt, and waiver is not appropriate. *See* B-224910, *supra* .

The employee compares his situation to that in 65 Comp. Gen. 216, *supra*. In our view the employee's situation differs from the situation in that decision in a significant way. In most instances of under-deduction of insurance premiums, the Comptroller General denied waiver on the grounds that the employee was expected to review his LES and the other information provided to him and verify that the correct premiums were being deducted. This Office has followed the same principle. However, in 65 Comp. Gen. 216, the employee stated that he reviewed his LES. He noted that \$53.99 was being deducted per pay period, and he erroneously believed that the government contributed fifty percent of an employee's FEGLI premiums. ⁽²⁾ The Comptroller General stated that it was reasonable for the employee to believe that a premium of over \$100 per pay period was sufficient to pay for the coverage he had elected-especially since comparable coverage was available from an insurance company for that amount. ⁽³⁾ In contrast, in the case before us, the amount being deducted from the employee's salary for FEGLI was \$17.16. While the employee states that he reviewed

his LES and determined that the insurance deduction appeared correct, it is our view that a reasonable person in his situation would have questioned whether \$17.16 was adequate to purchase nearly \$600,000 worth of life insurance (basic annual salary plus \$2,000, plus \$10,000, plus five times basic salary).⁽⁴⁾ Even if a review of his LES and SF-50 did not reveal the existence of error, the Board believes the amount being deducted for such a large amount of insurance should have prompted him to question the adequacy of the premiums.

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. The SF-50 indicates that its purpose was a change in life insurance.
2. The government contributes a portion of basic FEGLI premiums, but not optional coverage.
3. Because of the employee's age, the correct premium amount in that situation was \$253.99.

4. The total deduction for life insurance at the beginning of the period in question should have been \$73.26 per pay period, more than four times the \$17.16 being deducted.