

KEYWORDS: waiver of indebtedness; FSGLI premiums

DIGEST: Effective November 1, 2001, family coverage under Servicemembers' Group Life Insurance (FSGLI) automatically covers spouses and dependent children of uniformed service members. A member did not decline in writing FSGLI coverage for her spouse. FSGLI premiums should have been withheld from her pay, but they were not. If the member's spouse had died during the period when premiums were not being deducted, she would have received the FSGLI proceeds minus the uncollected premiums. Therefore, collection of the premiums is not against equity and good conscience.

CASENO: 08111302

DATE: 11/26/2008

DATE: November 26, 2008

In Re:)	
[REDACTED])	Claims Case No. 08111302
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Effective November 1, 2001, family coverage under Servicemembers' Group Life Insurance (FSGLI) automatically covers spouses and dependent children of uniformed service members. A member did not decline in writing FSGLI coverage for her spouse. FSGLI premiums should have been withheld from her pay, but they were not. If the member's spouse had died during the period when premiums were not being deducted, she would have received the FSGLI proceeds minus the uncollected premiums. Therefore, collection of the premiums is not against equity and good conscience.

DECISION

A member of the United States Army requests reconsideration of the October 31, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08102001. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS) decision to deny waiver of the government's claim against the member in the amount of \$489.50.

Background

The record shows that the member did not decline family coverage under Servicemembers' Group Life Insurance (FSGLI). In accordance with the provisions of 38 U.S.C. § 1967, all active duty members were automatically enrolled in FSGLI effective November 1, 2001, unless they elected not to participate in the program. Since the member did not decline coverage, FSGLI premiums should have been withheld from her pay. However, due to an administrative error, FSGLI premiums were not withheld from her pay from November 1, 2001, through November 30, 2007, causing an overpayment of \$489.50.

The DOHA adjudicator upheld DFAS's determination to deny waiver. In reaching her decision, the adjudicator noted that the member's October and November 2001 leave and earnings statements (LES) notified her that FSGLI coverage would become effective November 1, 2001. Further, the remarks section of her October 2001 LES stated that she should visit her personnel office to reduce or decline FSGLI coverage. In addition, the member did not present any documentary evidence reflecting she declined FSGLI. The adjudicator found that since the member received the benefit of the coverage, waiver of repayment of the unpaid premiums was not appropriate.

In her reconsideration request, the member states that she made every effort to let her personnel office know that she did not want FSGLI coverage. She was told that "all is well." Since no deductions were made, she thought nothing was wrong. She states that she was not overpaid \$489.50 because this amount was collected in a lump sum from her in March 2008. She states that she was never aware that she had FSGLI coverage. She contends, therefore, that if her spouse had died during the period premiums were not withheld, she would not have received the benefit because she did not know she was covered.

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 No. 08012801 (February 4, 2008), and DOHA Claims Case No. 07031906 (March 27, 2007).

Public Law 107-14, established FSGLI coverage for members of the uniformed services who are eligible for Servicemembers' Group Life Insurance (SGLI) coverage.¹ Under this law, effective November 1, 2001, FSGLI automatically covers spouses and dependent children of members.² In order to decline coverage for a member's spouse, the member must elect to do so in writing.³

In this case, the member states that DFAS collected the overpayment in the amount of \$489.50 from her in March 2008. However, DFAS's collection of the overpayment does not change the nature of the payments. The \$489.50 is still eligible for our consideration under the waiver statute, 10 U.S.C. § 2774. As noted in the appeal decision, the member's October and November 2001 leave and earnings statements (LES) notified her that FSGLI coverage would become effective November 1, 2001. Further, the remarks section of her October 2001 LES stated that she should visit her personnel office to reduce or decline coverage under FSGLI. Although the member states that she made every effort to let her personnel office know she did not want FSGLI coverage for her spouse, there is no documentation in the record to show that she declined FSGLI coverage in writing. If the member's insured spouse had died during the period when premiums were not being deducted, the member would have received the FSGLI proceeds minus the uncollected premiums. *See* DOHA Claims Case No. 07031906, *supra*. In such a situation, where the member received the benefit of the coverage, waiver of repayment of the unpaid premiums is not appropriate.

¹Pub. L. No. 107-14, § 4, 115 Stat. 25, 26-29 (2001).

²*See* 38 U.S.C. § 1967 and ¶ 471201 of Chapter 47, Volume 7A of DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures—Active Duty and Reserve Pay.

³*See* ¶ 471208 of Vol. 7A, DoDFMR. We note that a member can decline coverage for her spouse, but a member may not decline coverage or elect to insure any child for less than \$10,000. *See* ¶ 471204.

Conclusion

The member's request for relief is denied, and we affirm the January 11, 2008, appeal decision. In accordance with the Instruction, ¶ 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