

**DECISION**



*C. Robinson*  
*PLM I*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**7863**

**FILE:** B-190175 **DATE:** September 27, 1978

**MATTER OF:** Phillip M. Robinson - Waiver of  
Optional Life Insurance Premiums

**DIGEST:** Federal employee elected optional life insurance coverage under Federal Employees' Group Life Insurance Program on February 19, 1968. Due to Government's administrative error, appropriate deductions were not made from his pay from February 25, 1968, to March 30, 1974. Employee's request for waiver is denied since he had constructive, if not actual, knowledge of the overpayments. Also, it is not inequitable to require payment as employee would have been covered by optional life insurance had he died during period of overpayments.

This is an appeal from the action of our Claims Division on February 15, 1977, which denied the request for waiver by Mr. Phillip M. Robinson of optional life insurance premiums. Mr. Robinson is an employee of the Department of the Air Force at Wright-Patterson Air Force Base, Ohio.

The record shows that on February 19, 1968, Mr. Robinson applied for optional life insurance coverage. Prior to that time he was covered by regular Federal Employees' Group Life Insurance (FGLI). Through administrative error no deductions were made for the optional coverage from February 25, 1968, to March 30, 1974, resulting in an erroneous overpayment to the employee in the gross amount of \$702.30.

The standards for waiver of claims arising out of an erroneous payment of pay are found at title 4, Code of Federal Regulations, sections 91-93, which implement Public Law 90-616, as amended, 5 U.S.C. § 5584 (Supp. III, 1973). Section 91.5(c) provides for waiver where:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative

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error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim \* \* \* Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case \* \* \*."

We have consistently held that where an employee knows that he is being overpaid, he is precluded from waiver under these standards because it cannot be said that the employee is without fault in continuing to accept the erroneous payments. See B-174059, October 8, 1971; B-173386, October 8, 1971; B-171944, March 23, 1971. The same conclusion is required when an employee is found to have constructive knowledge of an overpayment. See B-168922, May 5, 1970; B-172117, May 12, 1971; B-168823, February 17, 1970.

It appears that before February 19, 1968, premiums for Mr. Robinson's regular Federal Employees' Group Life Insurance were properly being deducted from his paychecks. When Mr. Robinson elected the optional life insurance on February 19, 1968, in addition to his regular life insurance, larger premiums obviously should have been deducted from his pay beginning with the first pay period after that date. Nevertheless, Mr. Robinson's Earnings and Leave Statements continued to indicate the same premium deductions as had been made previously. Mr. Robinson argues that because he did not keep a close check on the accuracy of the deductions made from his pay and because of his trust of designated authorities, he was not aware that his premium deductions remained identical to earlier deductions. However, the Earnings and Leave Statements are distributed to Government employees precisely so that they may check for this type of administrative error on the part of the Government.

Even if Mr. Robinson did not in fact read his Earnings and Leave Statements, he must be held to have constructive knowledge of the Government's error. When no additional life insurance premiums were deducted from Mr. Robinson's paycheck, he should have inquired whether appropriate deductions were being made. The fact that he did not so inquire is an indication of fault on his part. We stated

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in B-165663, June 11, 1969, with regard to the requirement that there be no indication of fault on the part of the employee, that:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

Because Mr. Robinson was at fault in failing to notify appropriate officials of the fact that his premium deductions did not increase after he elected additional life insurance, the claimant's application for waiver of overpayment is denied.

It should also be noted that the standards for waiver of overpayments, in addition to indicating that waiver should be denied under circumstances which reveal some fault by the individual requesting waiver, also permit waiver when, "Collection action under the claim would be against equity and good conscience and not in the best interests of the United States." In this case the beneficiary of Mr. Robinson would have recovered his optional insurance had he died during the period after he had elected that insurance, although no premium payments were deducted due to the administrative error by the Government. For that reason we do not believe it is against equity and good conscience to require Mr. Robinson to pay for the insurance protection provided from February 25, 1968, until March 30, 1974.

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Accordingly, we must sustain the denial of the requested waiver.

*R. G. Klein*  
Acting Comptroller General  
of the United States