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DECISION



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

FILE: B-198931

DATE: July 24, 1980

MATTER OF: Alfred H. Dube *[Waiver for]* Nondeduction
of Insurance Premiums

DIGEST: Employee had premiums for regular coverage under Federal Employees Group Life Insurance deducted from his pay from September 14, 1970, to September 16, 1973. Thereafter until February 12, 1977, appropriate deductions were not made from his pay due to Government's administrative error. Employee's request for waiver of erroneous overpayments of pay under 5 U.S.C. § 5584 is denied since employee had continuous insurance coverage throughout period that premiums were not properly deducted and employee is not free from fault by virtue of his failure to identify overpayments through examination of Leave and Earnings Statements provided by agency.

Mr. Alfred H. Dube requests reconsideration of the action taken by our Claims Division on January 3, 1980, denying his application for waiver of the Government's claim against him arising out of erroneous overpayments of compensation in the amount of \$501.73. The overpayments resulted from non-deduction of Federal Employees Group Life Insurance premiums during the period from September 16, 1973, through February 12, 1977. In view of the applicable provisions of law and regulation we sustain the Claims Division action.

The record shows that on September 14, 1970, Mr. Dube executed Standard Form No. 176 declining optional Federal Employees Group Life Insurance but accepting regular Federal Employees Group Life Insurance coverage. Correct payroll deductions were effected during the period from September 14, 1970, to September 16, 1973, at which time Mr. Dube was transferred from Fort Devens, Massachusetts, to Fort McCoy, Wisconsin. Following this transfer, as a result of administrative error, no further

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life insurance premiums were withheld from Mr. Dube's pay until the error was discovered on February 12, 1977. The resulting erroneous overpayment of compensation to Mr. Dube during this period amounted to \$501.73.

Mr. Dube applied to the Department of the Army for waiver of the indebtedness and, under the provisions of 5 U.S.C. § 5584 (1976), the request was forwarded to our Office with the recommendation that the request for waiver be denied. Our Claims Division denied waiver of the erroneous overpayment on January 3, 1980. Inasmuch as the employee had been provided with Leave and Earnings Statements, an examination of which should have apprised the employee of the agency's failure to deduct the regular Federal Employees Group Life Insurance premium, the Claims Division found Mr. Dube to be at least partially at fault for the undetected overpayment.

In appealing the Claims Division's of his request for waiver, Mr. Dube states that initially he did not notice that the insurance premiums were not deducted from his pay. He acknowledges that he received Leave and Earnings Statements during the period in question. Mr. Dube states that since those statements did not show deductions for insurance premiums he did not notice any significant or unexplained increase in his compensation. He also states that when he did discover the error he immediately brought it to the attention of proper agency officials. In addition, Mr. Dube now contends that he was not covered by regular Federal Employees Group Life Insurance during the period that premiums were not withheld from his pay; and, that had a claim been presented during that time and it was discovered that premium payments had not been withheld from his pay, his beneficiary would not have received payment.

The authority for the waiver of claims arising out of erroneous payments of pay or allowances is contained in section 5584 of title 5, United States Code, which provides that where collection of such a claim would be against equity and good conscience and not in the best interest of the United States, it may be waived by the Comptroller General of the United States. However, it also provides that the Comptroller General may not exercise his waiver authority:

"* * * if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim * * *."

Our regulations implementing that statutory provision, are contained in part 91, title 4, Code of Federal Regulations (1978). Section 91.5 provides, in part, for waiver of an erroneous payment whenever:

"(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 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. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case * * *."

The conditions set forth in 4 C.F.R. 91.5 require more than freedom from fault--they impose on the employee an obligation to bring to the attention of the proper officials any unexplained increase in pay. B-171891, March 23, 1971. Where an employee was aware or should have been aware of an error in pay resulting in an overpayment, he cannot reasonably expect to retain such a payment, but should expect the Government to seek recovery. B-165908, March 14, 1969. In regard to circumstances in which an employee should have been aware of an error, we have stated that where an employee has necessary records which, if reviewed, would indicate overpayment, and the

employee fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. Arthur Weiner, B-184480, May 20, 1976. Furthermore, this obligation is not discharged by mere inquiry at a subsequent date. We have stated that, generally, when an employee is cognizant of an error which results in an overpayment to him even though he may inform his employing agency of the error, in the absence of official notice that the payments were not in error, he cannot reasonably expect to retain excess payments without being obligated to make a refund thereof when the error is corrected. See B-171944, March 23, 1971; and B-172117, May 12, 1971.

In the present case, incident to his regular coverage under the Federal Employees Group Life Insurance plan, payroll deductions for Mr. Dube's premium payments were made between September 14, 1970, and September 16, 1973. Thereafter, until the error was discovered on February 12, 1977, Mr. Dube's Leave and Earnings Statement did not reflect any deduction from his pay for life insurance premiums. Since Mr. Dube was aware that he had regular coverage and since the agency's failure to deduct the insurance premiums should have been apparent from his examination of the Leave and Earnings Statements provided, we must hold that Mr. Dube was on notice of the overpayment. Fred P. McCleskey, B-187240, November 11, 1976. Therefore, where the employee has the responsibility of verifying the correctness of the payments he receives, and where a reasonable person would have made inquiry but the employee did not, then he is not free from fault, and the claim may not be waived. Philip M. Robinson, B-190175, September 27, 1978, and cases cited therein.

Mr. Dube's contention that he would not have been covered by the Federal Employees Group Life Insurance had he died during the period of the erroneous overpayments is both factually and legally incorrect. Throughout the period from September 16, 1973, until February 12, 1977, Mr. Dube's regular Federal Employees Group Life Insurance coverage continued by virtue of sections 870.201, 870.203, and 870.204(a) of title 5, Code of Federal Regulations, which presently and throughout the period in question provides:

[Part 870 - Regular Life Insurance]
"§ 870.201 Coverage.

"Except as provided in § 870.202, each employee as defined by section 8701 of title 5, United States Code, shall, at the time and subject to the conditions prescribed in this part, be insured for an amount of regular insurance as specified in §§ 870.301, 870.602, and 870.702.

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"§ 807.203 Effective dates of insurance coverage.

" (a)(1) An employee appointed, or transferred from a position wherein he is not insured, is insured at the time he actually enters on duty on his first day in a pay status, unless before the end of his first pay period he files with his employing office a waiver of regular insurance coverage, or had previously filed such a waiver which remains uncanceled.

"(2) An employee transferring from a position wherein he is insured to another position wherein he is not excluded from coverage is insured at the beginning of the effective date of his transfer, unless before the end of his first pay period in the new position he files with his new employing office a waiver of regular insurance coverage.

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"§ 870.204 Cancellation of waiver of insurance coverage.

"(a) An insured employee may at any time cancel his regular insurance by filing with his employing office a waiver of insurance coverage. The waiver shall be effective and the employee's insurance ceases

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at the end of the pay period in which the waiver is received in the employing office."

Once effective, regular life insurance can be cancelled only by the employee's becoming ineligible for coverage or the employee's written cancellation. Since Mr. Dube had not waived regular life insurance coverage, never cancelled his regular life insurance coverage, and did not become ineligible for the coverage during the period that no deductions were made, then he received the full benefits of the regular life insurance coverage despite the fact that no insurance premiums were withheld. See generally Thomas O. Marshall, Jr., B-190564, April 20, 1978, and cases cited therein.

In view of the above we must sustain the determination of our Claims Division to deny the requested waiver.


Milton J. Jordan

For the Comptroller General
of the United States