

**DECISION**

19334 *Kirkpatrick*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202213

DATE: September 10, 1981

MATTER OF: Genevieve O'Leary

**DIGEST:** Waiver under 5 U.S.C. 5584 of overpayment may not be granted to employee who had reason to know that deductions should have been made from pay for regular Federal Employees Group Life Insurance. Not having signed a waiver of insurance the employee automatically had regular insurance and should have noted that insurance coverage was indicated on a standard form she signed, and on a Notice of Personnel Action she received.

In this case we hold that Mrs. Genevieve F. O'Leary, a civilian employee of the United States Marine Corps, may not be granted a waiver of erroneous payments made to her as a result of her employing office's failure to deduct from her pay amounts for Federal Employees' Group Life Insurance. This decision sustains a denial of her application for waiver under 5 U.S.C. 5584, made by our Claims Group on October 17, 1980.

Mrs. O'Leary accepted a temporary appointment in a Civil Service position on April 23, 1973, following an extended break in service. She states that she was informed at the time of employment that she was ineligible for either regular or optional insurance. Nevertheless, at the time of conversion of her appointment to career-conditional, an employment clerk checked "Block B" of item 3 on Standard Form 176 (Election, Declination, or Waiver of Life Insurance Coverage), indicating Mrs. O'Leary's intention to take regular, but not optional, insurance. The employment clerk asked her to sign the form, which she did on June 27, 1973. Evidently she did not read "Block B" because she states that she signed believing she was not to receive regular insurance, even though "Block B" stated to the contrary. The file also includes a Standard Form 50 (Notification of Personnel Action) converting Mrs. O'Leary from a temporary appointment to reinstatement of a career-conditional appointment effective June 27, 1973. This form, a copy of which she evidently received, indicated in item 9 that she had regular insurance coverage.

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B-202213

Despite the documentation showing that she was enrolled in the insurance program, no payroll deductions were made for this coverage. Deductions from her pay totaling \$729.53, through April 5, 1980, which should have been made, were not, resulting in overpayments of compensation. Mrs. O'Leary requests that these overpayments be waived under 5 U.S.C. 5584 because she did not believe she had coverage and, therefore, had no reason to question the absence of the deductions from her pay. She also points out that payroll clerks did not question the absence of deductions although they reviewed the same documents. Further, she does not believe that any insurance proceeds would have been paid to a beneficiary in the event of her death during the period when the agency failed to deduct premiums.

Unless excluded by law or regulation, an employee is automatically covered by regular insurance if the employee does not file a waiver of coverage. See 5 U.S.C. 8702; Federal Personnel Manual Supplement (FPM Supp.) 870-1, Subchapters S2-1a and S2-3a, Inst. 13, September 27, 1972; and B-160554, March 28, 1967. Further, if by mistake payroll deductions are not made for the premiums, deductions are to be taken in subsequent pay periods to adjust and recover the proper amounts. FPM Supp. 870-1, Subchapter S4-7b(2).

Mrs. O'Leary was apparently ineligible for the insurance coverage at the time of her temporary appointment on April 23, 1973, since 5 C.F.R. § 870.202(a)(1)-(2) (January 1, 1973) excluded temporary appointees. However, as indicated above, without filing a waiver she was automatically insured for regular insurance when she was converted to a career-conditional appointment on June 27, 1973. She not only failed to file a waiver, but on that day she affirmatively indicated she desired regular insurance on the proper form and also received a copy of a Notice of Personnel Action indicating insurance coverage. Consequently, her beneficiary would have received insurance proceeds in the event of her death despite the mistake of not deducting the premiums.

We have held that if the employee does not carefully read payroll records indicating the employing agency's failure to deduct proper amounts for insurance, he is not entitled to waiver under 5 U.S.C. 5584. See Fred P. McCleskey, B-187240,

B-202213

November 11, 1976. Mrs. O'Leary failed to read the Standard Forms 176 and 50, both indicating insurance coverage. Had she done so, she should have known that premiums should have been deducted. Further, she received the benefit of coverage. For these reasons, we cannot agree that collection of the overpayment would be against equity and good conscience, the standard for waiver under 5 U.S.C. 5584.

Accordingly, our Claims Group's disallowance of waiver (Z-2825083, October 17, 1980) is sustained.

*Milton J. Fowler*

Acting Comptroller General  
of the United States