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**DECISION**



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

**FILE:** B-203458

**DATE:** September 29, 1981

**MATTER OF:** Raymond W. S. Lau - Request for waiver

**DIGEST:** Employee elected to enroll in high option (family plan) health benefits plan in June 1968. Incident to transfer and promotion action in July 1969, and thereafter until November 1978, when employee discovered and reported error, agency erroneously made payroll deductions for health benefits coverage at the self-only rate. Request for waiver pursuant to 5 U.S.C. § 5584 for debt resulting from erroneous under-deductions is denied since employee is not free from fault by failing to verify correctness of compensation as indicated on earnings statement furnished to him by employing agency. It is not inequitable to require payment because employee was entitled to health services at the high option level during period of claim.

This is an appeal from the settlement of our Claims Group (Z-2826310) which denied Mr. Raymond W. S. Lau's request for waiver of collection of elective health benefits premiums. For the reasons stated below, we conclude that waiver may not be granted.

As an employee of the Public Works Center, Pearl Harbor, Hawaii, Mr. Lau was enrolled in the "family plan" (high option) health benefits program on June 2, 1968. Prior to that election, his health benefits had been under the "self-only" coverage. Through administrative error incident to his transfer and promotion to a position in the Pearl Harbor Naval Shipyard, effective July 27, 1969, Mr. Lau's payroll deduction for health benefits was coded at the self-only rate. As a result, from July 27, 1969, until he discovered and reported the erroneous under-deduction on November 15, 1978, Mr. Lau was erroneously overpaid in the amount of \$1,972.39.

Mr. Lau requested waiver of the above overpayments, but this action was denied by our Claims Group on the basis that Mr. Lau should have noticed that his deduction for health benefits coverage decreased after his transfer.

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Since he was not expecting such a decrease, he should have promptly questioned appropriate officials and until his pay was resolved, retained the excess amounts for refund to the Government. Thus, our Claims Group concluded that "Mr. Lau's failure to take the proper, prudent actions in this matter place him at least partially at fault, which statutorily precludes waiver of the claim."

In essence Mr. Lau contends on appeal that the erroneous under-deductions for health benefits coverage were the direct result of the agency's administrative error and thus any fault in the matter is equally upon the Government. He points out that he discovered and reported the error on November 15, 1978, thus there is no indication of fraud, misrepresentation, fault, or lack of good faith on his part. As a result, Mr. Lau feels waiver of the erroneous overpayments is justified.

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified Federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

"Fault," as used in this statutory provision is not necessarily a matter of precise definition but must be applied to the circumstances of a given case. Consider our reasoning in our decision B-165663, June 11, 1969:

"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

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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."

More specifically, in an analogous case involving underdeductions for employee life insurance coverage, Owen M. Cornell, Jr., B-183249, June 23, 1975, we stated:

"We believe that where, as here, an employee (1) elected an employee benefit that was funded out of pay deductions, (2) such employee intended to and, by law, did receive the benefits of his election, (3) the cost of such payment was readily ascertainable when the election was made, and (4) the employee was fully apprised by his earnings statements of the actual amount deducted for payments for the elected benefit within a relatively short period of electing such benefit, then such employee had a duty to find out whether such deductions were properly made and report any discrepancies to the proper authority for rectification."

The costs of self-only and family plan health benefits coverage were no doubt known to Mr. Lau at the time he made his election on June 2, 1968. If not, they were, at least, readily ascertainable, and we believe a reasonable man would have inquired about the premiums before making such an election. Mr. Lau's earnings statements clearly indicated the amount which was being deducted per pay period. If he had examined the earnings statements and compared the amount deducted with the actual cost of the family plan health benefit coverage, he would have discovered the error. Earnings statements are distributed to Government employees in part so that they may check for this type of administrative error on the part of the Government. As we stated in our decision Arthur Weiner, B-184480, May 20, 1976:

"\* \* \* we cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. This is an essential function in the Government's attempts to reduce payroll errors. Each employee

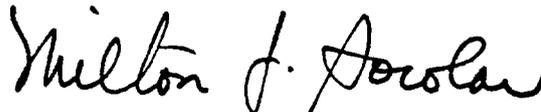
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should carefully analyze the pertinent payroll documents provided by his agency to verify the accuracy of such data. Any discrepancies should be immediately reported to the appropriate office for proper remedial action."

Therefore, Mr. Lau was at least partially at fault in failing to notice the error, and the indication of fault precludes favorable waiver consideration. See Roosevelt W. Royals, B-188822, June 1, 1977. We are not suggesting that the administrative error is transferred to the employee, but rather we find that the employee, who has been given the means to verify the correctness of his pay checks and has failed to do so, is not without fault in the matter. The employee's agency has a responsibility to prepare proper payrolls and the duty to take steps to insure that this responsibility is properly carried out. The employee, on the other hand, has the responsibility of verifying the correctness of the payments he receives, and where a reasonable man would have made inquiry as to the correctness of the payment and the employee did not, then he is not free from fault and the claim may not be waived. See Bernard J. Killeen, B-198207, January 14, 1981.

Further, it should 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 limit waiver to those instances 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 Mr. Lau was entitled to health services at the high option (family plan) coverage level during the period when self only premiums were being contributed to the health benefits program. For that reason we do not believe that it is against equity and good conscience to require Mr. Lau to pay for the health benefits coverage provided from July 27, 1969, until November 15, 1978.

Accordingly, we sustain the action of our Claims Group in denying Mr. Lau's request for waiver.



Acting Comptroller General  
of the United States