

DECISION

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

FILE: B-210532

DATE: August 3, 1983

MATTER OF: Frederick D. Crawford - Waiver -
Nondeduction of Optional Life Insurance
Premiums

DIGEST:

Employee elected regular and optional life insurance coverage under the Federal Employees' Group Life Insurance Program (FEGLI), but when he transferred in 1969, the new agency stopped deducting his optional insurance premiums due to an administrative error. Since the employee received Leave and Earnings Statements throughout the period in question, which reflected optional premium deductions before his transfer, but not afterward, his failure to examine the statements and to note the error makes him at least partially at fault, thereby precluding waiver under 5 U.S.C. § 5584.

Mr. Frederick D. Crawford, a civilian employee of the United States Army, appeals our Claims Group's September 26, 1980, denial of his request for waiver of a claim against him by the United States for overpayment of compensation in the amount of \$674.60. The overpayment resulted from his agency's failure to make proper deductions from his salary for his optional life insurance coverage under the Federal Employees' Group Life Insurance Program (FEGLI). For the reasons stated below, we conclude that waiver should not be granted under the circumstances of this case.

Mr. Crawford, a Procurement Analyst employed by the U.S. Army Tank Automotive Command at Warren, Michigan, elected both regular and optional life insurance coverage under FEGLI on February 20, 1968. Thereafter, he was transferred to the White Sands Missile Station, effective March 23, 1969. At the time of the transfer, the agency failed to note that Mr. Crawford had previously elected coverage under both the regular and optional life insurance plans. As a result, from March 23, 1969, through early February 1978, when the error was discovered, the agency deducted only regular insurance premiums from Mr. Crawford's salary, resulting in a total overpayment of \$674.60.

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Mr. Crawford initially applied to the Department of the Army for waiver of his indebtedness and, under the provisions of 5 U.S.C. § 5584, the request was forwarded to our Office with the recommendation that waiver be approved in part, and denied in part. In a submission dated March 2, 1979, the Army Finance and Accounting Center recommended that waiver of \$639.80 be approved since, in its view, a reasonable person might not have recognized that an error had been made, since several pay changes had occurred during the period in question. In addition, the agency postulated that Mr. Crawford's Leave and Earnings Statements might have confused him since they reflected only one deduction for both regular and optional life insurance prior to September 17, 1977. The agency recommended that waiver of the remaining \$34.80 be denied since overpayment of this amount occurred after September 17, 1977, when the Leave and Earnings Statements began to show separate entries for regular and optional insurance deductions.

Despite this recommendation, our Claims Group denied waiver of the erroneous overpayment in its entirety in a settlement letter dated September 26, 1980. Since Mr. Crawford had been provided with Leave and Earnings Statements throughout the period of the overpayment, an examination of which would have apprised the employee of the agency's failure to deduct the optional FEGLI premiums, the Claims Group found Mr. Crawford to be at least partially at fault for the undetected overpayment.

In an appeal dated September 30, 1982, Mr. Crawford asserts that he did not know, and could not reasonably have known, that optional premium payments were not being deducted from his salary since, "deductions for life insurance did show increases over the years and were taken to be the proper accounting for the total insurance coverages (regular and optional)." Moreover, Mr. Crawford claims that the premium deductions of \$674.60 are charges for a benefit that he never received, since neither Mr. Crawford nor any other covered family member died or suffered injury while the policy was in effect. Furthermore, he expresses doubt that his family would have been able to receive the optional life benefit if he had died during the term of the policy.

The Comptroller General is authorized by 5 U.S.C. § 5584 to waive claims for overpayment of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Such

authority may not be exercised if there is 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. Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, waiver hinges on whether Mr. Crawford is found to be at fault.

We consider "fault" to exist if, in light of all the circumstances, it is determined that the individual concerned should have known that an error existed, but failed to take action to have it corrected. See Charles J. Zeman, B-199802, November 28, 1980, and 4 C.F.R. § 91.5 (1983). In making this determination, we ask whether a reasonable person in the employee's position should have been aware that he was receiving payment in excess of his proper entitlements. See George R. Beecherl, B-192485, November 17, 1978, and Charles J. Zeman, above.

If an employee has records which, if reviewed, would indicate an 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. See Bernard J. Killeen, Jr., B-198207, August 22, 1980; John J. Doyle, B-191295, July 7, 1978. This rule is particularly relevant in the case of Leave and Earnings Statements. As we stated in 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. Such review, and reporting of discrepancies for remedial action, is an essential function in the Government's attempt to reduce payroll errors. Thus, if an employee is given a Standard Form (SF) 50 showing that he has life insurance coverage but his Leave and Earnings Statements show that premiums were not withheld, the employee has notice of an error and is ordinarily considered to be at least partially at fault if he fails to take corrective action. John J. Doyle, above.

In this case, Mr. Crawford's transfer to the White Sands facility was initially documented by an SF-50, dated March 24, 1969, which erroneously indicated that he had elected only regular life insurance coverage. This error was later corrected, however, by a second SF-50, dated April 23, 1969, which properly indicated that Mr. Crawford had elected both regular and optional insurance coverage. The record further indicates that Mr. Crawford received

biweekly Earnings Statements both before and after his transfer to the White Sands facility. We believe that an examination of those statements should have revealed the underdeduction to Mr. Crawford, for the amount deducted for his insurance coverage was considerably less than the amount which should have been deducted on a biweekly basis for both regular and optional coverage. This underdeduction should have been particularly evident to Mr. Crawford during the first year after his transfer, since his total biweekly insurance deductions during that period (at \$3.58 initially, and, later, at \$3.85), were less than the amount which should have been deducted for optional insurance alone, which was then \$6.00 each pay period.

Furthermore, in completing Mr. Crawford's application for waiver, dated September 20, 1978, the agency stated as follows:

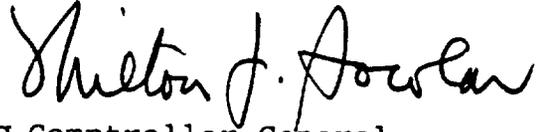
"Mr. Crawford stated, he had not verified the pay computation shown on his earnings and leave statement in detail necessary to determine optional life insurance was not being deducted from his earnings and that he did not have insurance tables to determine the exact amount of insurance premiums that should have been deducted."

Since Mr. Crawford was aware that he had elected optional life insurance coverage, and since the agency's failure to deduct the optional premiums should have been apparent from an examination of the Leave and Earnings Statements provided, we must conclude that Mr. Crawford was on notice of the overpayment, and thereby deny waiver.

Mr. Crawford also asserts that he may have received no benefit from the optional insurance coverage since it is not clear to him that his beneficiary would have received payment had he died. Contrary to Mr. Crawford's belief, his beneficiary would have received the life insurance if he had died during the period after he elected coverage even though no premium payments were deducted from his wages. Under 5 C.F.R. §§ 871.203 and 871.204, optional insurance can be cancelled only by the employee's ineligibility for coverage or the employee's written cancellation. See Thomas O. Marshall, Jr., B-190564, April 20, 1978. For this reason, we have held that it is not against equity and good conscience to require an employee in Mr. Crawford's situation to pay for the life insurance protection provided.

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For the reasons set forth above, we sustain the determination by our Claims Group denying Mr. Crawford's request for waiver.

A handwritten signature in cursive script, reading "Shelton J. Fowler".

Acting Comptroller General
of the United States