



**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Ruth Chandler

**File:** B-261484

**Date:** June 30, 1995

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### DIGEST

Through administrative error, agency neglected to deduct premiums for Federal Employees Group Life Insurance from employee's salary for 8 months after employee transferred to agency. The employee received leave and earning statements during this period and should have known that the deductions were not being made. Her failure to make inquiry as to the correctness of her salary constitutes fault on her part. Waiver of the overpayment is denied.

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### DECISION

An employee of the Air Force appeals our Settlement Certificate Z-2942060, dated April 25, 1995, denying her waiver of \$509.68 salary overpayment which resulted from the Air Force's failure to deduct life insurance premiums from her salary. We sustain the denial.

### BACKGROUND

While Ms. Chandler was assigned to Maxwell Air Force Base, Alabama, she initiated Standard Form (SF) 2817 electing Federal Employee's Group Life Insurance (FEGLI) coverage, basic life plus standard option. She subsequently transferred to the Defense Commissary Agency. Proper deductions for FEGLI were withheld from Ms. Chandler's salary during her employment with the Air Force, and while she was employed by the Defense Commissary Agency. Effective February 9, 1992, Ms. Chandler transferred back to the Air Force. At that point, the Air Force erroneously failed to withhold FEGLI premiums from Ms. Chandler's salary. As a result, she was overpaid \$509.68 from February 9, 1992, through October 16, 1993.

The record indicates that administrative changes to Ms. Chandler's basic pay caused fluctuations in her net pay for six pay periods between February and May 1992. Between February and October 1993, Ms. Chandler received several SF 50's for unrelated personnel actions each indicating correct FEGLI coverage and received leave and earnings statements showing no payroll deductions for FEGLI. In April

1993, the Air Force payroll office received print-outs regarding errors in Ms. Chandler's pay. On September 21, 1993, the payroll office informed Ms. Chandler that FEGLI deductions had been omitted from her pay since her transfer in February 1992.

On September 27, 1993, Ms. Chandler requested waiver of the overpayment stating she was not at fault and claiming financial hardship if she had to repay. The Air Force denied her request. Upon appeal to our Office, we affirmed the Air Force's denial on the grounds that she received leave and earnings statements throughout the period which she could have used to verify the correctness of her pay. She was therefore considered to be partially at fault and precluded from waiver.

On appeal, Ms. Chandler argues that the payroll office should be held responsible for their error, especially since they knew of the error as early as April 1993 but correction was not made until October 1993.

#### ANALYSIS AND CONCLUSION

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to 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. Since there is no indication of fraud, misrepresentation, or lack of good faith, in the present case our determination is based upon whether Ms. Chandler was at fault in accepting the erroneous payments.

Fault is considered to exist if the employee knew or should have known that an error existed but failed to take corrective action. See 4 C.F.R. § 91.5 (1992). If it is determined that a reasonable person, under the circumstances involved, would have made inquiry as to the correctness of payment but the employee did not, then the employee may not be said to be free from fault, and the overpayment may not be waived. This is true even though the employee's agency has the responsibility to prepare proper payrolls and the duty to take steps to ensure that this responsibility is properly discharged. See, Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988. An employee who has received documents that on their face indicate that premiums are being deducted for coverage lower than that elected by the employee is on notice of the error, and the employee will be held at least partially at fault for failing to seek corrective action. See Thomas G. Stevens, B-237234, Jan. 18, 1990.

Cases in which we have granted waiver have involved facts that are distinguishable from those of the case at hand. For example, if the deduction appears reasonable

on its face, we have held that there is no reason to expect or require an employee to audit the amount shown. Where premiums stated on the leave and earnings statements did not appear unreasonable and employee was unaware that premiums should have been higher per pay period, the employee is not held at fault for the overpayments. 65 Comp. Gen. 216 (1986). Similarly, when the dollar amount in error is relatively small, there are wide fluctuations in the employee's pay and the employee was not otherwise on notice of the error by reason of his position, collection of erroneous payment of pay has been waived. James F. Wardian, B-172975, Oct. 27, 1971.

The leave and earnings statements Ms. Chandler received indicated that no payroll deductions were being made for FEGLI, yet the Standard Form 50's she received showed no change in her insurance coverage when she transferred to the Air Force. A reasonable person should have expected the deductions that had previously been taken to continue. Ms. Chandler had the primary responsibility of examining her leave and earnings statements and promptly bringing errors to the attention of Air Force officials. Since she did not do so, we cannot find that she is free from fault in the matter. When overpayment results from administrative error and the employee is found to be at fault, waiver cannot be granted under 5 U.S.C. § 5584 (1992).

In light of the foregoing, the settlement certificate, which denied waiver of the overpayment of pay, is sustained.

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel