

Person
7476

13186 GA000040

DECISION



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

[Request for Waiver of Overpayments]

FILE: B-197810

DATE: March 20, 1980

MATTER OF: Howard G. Rutter - Waiver of Optional Life Insurance Premiums

DIGEST: Federal employee elected optional life insurance coverage under Federal Employees Group Life Insurance Program. Due to Government's administrative error, appropriate deductions from his pay were not made. Employee's request for waiver is denied since he had constructive, if not actual, knowledge of the overpayments. Also, it would not be inequitable to require payment because employee was covered by optional life insurance even though premiums were not deducted from his pay.

This is an appeal from the action of our Claims Division on October 3, 1979, which denied the request for waiver by Mr. Howard G. Rutter of optional life insurance premiums, in the amount of \$629.50. Mr. Rutter is an employee of the Department of the Interior, Mining Enforcement and Safety Administration. The claim against Mr. Rutter arises out of erroneous overpayments of pay caused when deductions of premium payments for optional Federal Employees Group Life Insurance (FEGLI) which he had elected were not taken from his pay.

The record shows that Mr. Rutter executed a Standard Form 176 electing both optional and regular FEGLI coverage upon his entry on duty as an employee of the Department of Interior. Due to an administrative error, deductions for Mr. Rutter's optional life insurance were not taken from his pay from the time he reported for duty on January 11, 1971, and ending with the pay period ending October 8, 1977. This caused overpayments to be made to Mr. Rutter in the total amount of \$629.50.

Mr. Rutter applied to the Department of Interior for a waiver of his indebtedness, and, under the provisions of 5 U.S.C. § 5584 (1976) the request was forwarded to our Office with the

111850

~~009071~~

B-197810

recommendation that the request for waiver be allowed up through pay period 15 in 1973, totaling \$234.00 and that the remainder of \$395.50 not be waived. The agency recommendation was based upon the publication of reduced rate changes in July 1973, which it reasons should have caused Mr. Rutter to question why his deductions for life insurance did not change. Inquiry then would have shown that deductions were not being made for optional life insurance. Claims Division denied waiver of any of the erroneous overpayment on October 3, 1979. Mr. Rutter is appealing that denial.

Claims Division's denial of waiver was based upon the fact that, since Mr. Rutter had been receiving "Statements of Earnings, Deductions, and Leave" during the period in which the erroneous underdeductions were made, he could have uncovered the errors by examining his earnings statements. Therefore, Mr. Rutter was held to be at least partially at fault for the undetected error.

Mr. Rutter contends that since the earnings statements did not separate the deductions being taken for the optional and the regular FEGLI coverage, there was no indication on the face of the earnings statements that only the premiums for the regular insurance coverage were being deducted. In other words, he argues that there was no way to tell by examining the earnings statements that the premiums for the optional coverage were not being deducted.

The standards for waiver of claims arising out of an erroneous payment of pay are found in parts 91-93, title 4, Code of Federal Regulations (1976), which implement Public Law 90-616, as amended, 5 U.S.C. § 5584 (Supp. IV, 1974). Section 91.5 (c) provides for waiver where:

"(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. * * *Waiver of overpayments

B-197810

of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *"

We have consistently held that where an employee knows that he is being overpaid, he is precluded from waiver under these standards because it cannot be said that the employee is without fault in continuing to accept the erroneous payments. The same conclusion is required when an employee is found to have constructive knowledge of an overpayment. See Marvin G. Adams, B-183113, March 31, 1975, and cases cited therein, denial sustained on reconsideration July 21, 1975.

In Owen M. Cornell, Jr., B-183249, June 23, 1975, we denied waiver in circumstances similar to the present case, stating:

"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."

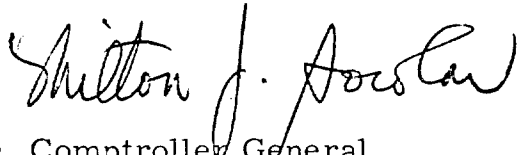
Mr. Rutter reports that he did calculate what the optional insurance would cost per month at the time he made his election.

Mr. Rutter'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 optional insurance coverage, he would have discovered the error. Earnings statements are distributed to Government employees precisely so that they may check for this type of administrative error on the part of the Government. Adams, supra. Therefore, Mr. Rutter was at least partly at fault in failing to notice the error, and waiver is precluded by law.

B-197810

It should also 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 indicate that waiver may only be granted 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 the beneficiary of Mr. Rutter would have recovered his optional insurance had he died during the period after he had elected that insurance although no premium payments were deducted due to the administrative error by the Government. For that reason we do not believe it is unfair to require Mr. Rutter to pay for the insurance protection provided. See Adams, supra.

Accordingly, we affirm the denial of the requested waiver.

A handwritten signature in cursive script that reads "Shelton J. Fowler". The signature is written in dark ink and is positioned above the typed name of the signatory.

For the Comptroller General
of the United States