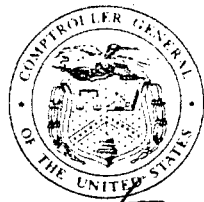


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DECISION



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

[Request For Reconsideration]

FILE: B-199802

DATE: November 28, 1980

MATTER OF: Charles J. Zeman

DIGEST: Employee of the Federal Government elected regular and optional life insurance under FEGLI. On transfer from one agency to another in 1975, a payroll record error resulted in nondeduction for insurance premiums. Since the employee received Leave and Earnings Statements throughout the entire period on which premium deductions should have been reflected, but were not, his failure to examine them, note the error and have the matter corrected makes him at least partially at fault, thereby precluding waiver under 5 U.S.C. 5584.

This action is in response to a letter from Mr. Charles J. Zeman, a Federal employee, requesting reconsideration of the action of our Claims Division, dated March 4, 1980, which denied waiver of his indebtedness to the United States which arose as a result of his agency's failure to make deductions from his salary for life insurance coverage under the Federal Employees Group Life Insurance Program.

DLG 00921

The file shows that in 1974, while employed by the National Security Agency, Mr. Zeman elected regular and optional life insurance. Thereafter in April 1974 he transferred from that agency to another agency and served a tour of duty overseas in a civilian capacity with the second agency. In 1975 he was retransferred to his original employing agency, but upon reassignment a payroll record error was made and deductions for his regular and optional life insurance were not reestablished. Upon discovery the amount of the underdeduction was established as \$1,306.54.

Mr. Zeman states that while he was overseas he was assigned to one grade level higher than his then current grade and on retransfer he reverted to his pretransfer

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grade. Since he also ceased receiving an overseas pay differential on retransfer, his net pay was considerably reduced. As a result, he contends that there was nothing to alert him to the fact that his net pay, as reduced, should have been even less.

The authority for waiver of claims for overpayments of pay and allowances of civilian employees of the Federal Government is contained in 5 U.S.C. 5584 (1976). That section provides that where collection of such a claim would be against equity and good conscience and not in the best interest of the United States, it may be waived by the Comptroller General, unless:

"* * * in his opinion, there exists, in connection with the claim, 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 * * *;" (Emphasis added.)

We consider "fault" to exist if, in 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 4 C.R.F. 91.5 and 56 Comp. Gen. 943 (1977). The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements. See Matter of George R. Beecher, B-192485, November 17, 1978.

Mr. Zeman received biweekly Employees Pay and Leave Statements throughout the entire period of the underdeduction. Those statements clearly show that no life insurance premium deductions were made. Employees have the obligation to examine their own pay records when they are furnished to them and to determine the correctness of the entries. Failure of an employee to assume such responsibility places the employee in the

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position of being at least partially at fault if the records are inaccurate and are permitted to remain so. See Matter of Bernard J. Killeen, Jr., B-198207, August 22, 1980.

Mr. Zeman also suggests that he may have received no benefit from the insurance coverage since it is not clear to him that his beneficiary would have received payment had he died. However, 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. §§ 870.201, 870.204, 871.203 and 871.204 insurance can be cancelled only by the employee's ineligibility for coverage or the employee's written cancellation. See Matter of 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. Zeman's situation to pay for the life insurance protection provided.

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

Milton J. Fowler

For the Comptroller General
of the United States