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DECISION



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

FILE: B-219122

DATE: January 22, 1986

MATTER OF: Hollis W. Bowers - Waiver of Erroneous Overpay-
ments - Insurance Premiums

DIGEST:

1. Section 8707(d) of Title 5, United States Code, grants an agency the authority to waive the collection of unpaid life insurance deductions, where it fails to withhold the proper amount, if the individual is without fault and recovery would be against equity and good conscience. This waiver authority is not subject to the \$500 limit on agency authority in 5 U.S.C. § 5584. However, this Office may also consider the waiver of erroneous underwithholding of insurance premiums under the broad waiver authority contained in 5 U.S.C. § 5584.
2. Employee received overpayments of pay because agency failed to deduct full insurance premiums from his pay. Employee is not held at fault for overpayments where premiums stated on leave and earnings statements did not appear unreasonable and employee was unaware that premiums should have been \$200 higher per pay period. If the deduction appears reasonable on its face, we are aware of no reason to expect or require an employee to audit the amount shown. Overpayments are waived since the employee could not have been expected to question the correctness of his pay.

In this decision we hold that Mr. Hollis W. Bowers, an employee of the Nuclear Regulatory Commission (NRC), may be granted waiver of erroneous payments made to him as a result of his agency's underdeduction for Federal Employees Group Life Insurance (FEGLI) premiums. This decision overrules a denial of his application for waiver under 5 U.S.C. § 5584 made by our Claims Group on March 14, 1985.

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BACKGROUND

Mr. Bowers was appointed to the position of Assistant Director for Investigations, Office of the Inspector and Auditor (GS-15), with NRC on October 18, 1982. He had previously worked for approximately 30 years with the Federal Government, retiring in 1970 at the GS-14 level. During Mr. Bowers' previous Federal service he had been covered by FEGLI. On October 18, 1982, during Mr. Bowers' orientation session for new NRC employees, he submitted an SF-2817, "Life Insurance Election," which indicated his election of standard coverage and additional coverage at five times the basic coverage. At this time Mr. Bowers was given a copy of the FEGLI Handbook (SF-2817A, FPM Supplement 870-1) which explains the insurance coverage available and the applicable rates. However, Mr. Bowers reports that the employee who conducted the orientation briefing did not highlight for him the relatively high cost of FEGLI for someone of Mr. Bowers' age who elects the maximum coverage available. Mr. Bowers received two Notification of Personnel Action Forms (SF-50s), one contemporaneous with his FEGLI election, and both stating that he was covered by the regular insurance and the additional insurance at five times his pay. Additionally, Mr. Bowers received 26 Earnings and Leave Statements with the correct FEGLI coverage code but with the incorrect withholding amount immediately prior to the correction of the amount withheld.

The first pay period for which Mr. Bowers was charged the correct FEGLI premium amount was pay period 23 of 1983, covering the period of October 16-30, 1983. On November 8, 1983, Mr. Bowers contacted an appropriate agency official to question the increase in his FEGLI payroll withholding for pay period 23 as shown on his Earnings and Leave Statement. Mr. Bowers was concerned that an error had been made since he had not changed his FEGLI coverage. Upon review, the agency discovered that Mr. Bowers had been charged the correct FEGLI amount for his elected coverage in pay period 23, the pay period Mr. Bowers had questioned, but that he had been undercharged for the prior 26 pay periods. The agency's investigation determined that the cause of the error stemmed from a problem in the automated payroll system.

The NRC reports that the automated payroll system problem was corrected with the installation of a new operating system for the payroll computer. The agency

reports that no inquiry or other action was initiated by Mr. Bowers to verify the correctness of his FEGLI withholding until pay period 23. On December 6, 1983, Mr. Bowers was billed for the overpayment caused by the underdeductions of life insurance premiums in the amount of \$5,200, represented by the amount of underdeduction per pay period of \$200 times the 26 pay periods involved. The correct biweekly cost of FEGLI for the total coverage elected by Mr. Bowers was \$253.99.

By memorandum dated December 19, 1983, Mr. Bowers requested NRC to waive the erroneous overpayments of pay made to him as a result of the underwithholding of FEGLI premiums under the agency's waiver authority found in 5 U.S.C. § 8707(d) (1982). The NRC, acting through its Director, Division of Accounting and Finance, Office of Resource Management, denied Mr. Bowers' request for waiver by memorandum dated February 28, 1984. In denying his request for waiver, the Director pointed out that our Office has held that it is incumbent upon an employee to verify the correctness of entries on Earnings and Leave Statements provided to the employee. The Director cited our decision Willie Baca, B-211932, October 20, 1983, where we sustained the denial of a waiver where an employee was furnished with Earnings and Leave Statements showing erroneous deductions resulting from an administrative error in computing the correct payroll deductions for the employee's life insurance.

By letter dated September 26, 1984, Mr. Bowers appealed the denial of his request for waiver by NRC to our Claims Group. Our Claims Group sustained the action of NRC in denying waiver by letter dated March 14, 1985, essentially agreeing with the rationale for denial set forth by the NRC.

ANALYSIS AND CONCLUSIONS

Waiver Jurisdiction

Mr. Bowers raises a question concerning the authority under which both the NRC and our Claims Group considered his request for waiver. Mr. Bowers has specifically and repeatedly requested that his request for waiver be considered pursuant to 5 U.S.C. § 8707(d), which provides that if "an agency fails to withhold the proper amount of life

insurance deductions from an individual's salary . . . , the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience." As Mr. Bowers has pointed out, section 8707(d), by its terms, does not have any waiver limitation amount such as exists in 5 U.S.C. § 5584(a), which limits an agency's waiver authority to amounts not in excess of \$500.

Since Mr. Bowers' overpayments specifically resulted from NRC's failure to withhold the proper amount of life insurance deductions and exceeded \$500, he questions the propriety of the NRC's and our Claims Group's denial of his waiver request under 5 U.S.C. § 5584 (1982). The NRC reports that it applied 5 U.S.C. § 5584 as a result of the regulation published by the Office of Personnel Management at 5 C.F.R. § 870.401(h)(2) (1984), which states that an agency will make its determination on the waiver of collection in accordance with 5 U.S.C. § 5584 when specifically considering the collection of unpaid life insurance premiums.

We have been informally advised by OPM, the agency which proposed the enactment of 5 U.S.C. § 8707(d), that it did not intend any change in the waiver authority, standards, or procedures by its enactment. It has attempted to clarify this by the promulgation of its rules found at 5 C.F.R. § 870.401(h). The OPM has advised that its primary purpose in proposing the enactment of 5 U.S.C. § 8707 was to make clear that if an agency waives the collection of unpaid insurance deductions from an individual's pay, the agency must submit an amount equal to the sum of the uncollected deductions, and any applicable agency contributions, to OPM for deposit in the Employees' Life Insurance Fund.

Our Claims Group did not consider Mr. Bowers' waiver request under 5 U.S.C. § 8707(d) as he had requested for the reason that section 8707(d) provides no authority for our Office to do so. However, the broad waiver authority provided our Office under 5 U.S.C. § 5584 has been consistently interpreted as encompassing the waiver of erroneous underwithholding of FEGLI premiums. See Santo M. Lacagnina, B-203459, December 8, 1981; and Willie Baca, B-211932, supra. We are not aware of anything in the legislative history of the Federal Employees Group Life Insurance Act of 1980, Public Law 96-427, 94 Stat. 1833, which added the provisions of 5 U.S.C. § 8707(d); to suggest that the Congress had any intent to deprive employees of their existing right to appeal waiver denials

to our Office. We do not believe that 5 U.S.C. § 8707(d) should be interpreted as implicitly foreclosing our pre-existing waiver authority under 5 U.S.C. § 5584. We have been informally advised by OPM that it is in agreement with this view. Therefore, our Office retains concurrent jurisdiction under 5 U.S.C. § 5584 to consider waiver of FEGLI underwithholdings, notwithstanding 5 U.S.C. § 8707(d).

Merits of Waiver

In requesting that our Office reverse the Claims Group's denial of his waiver request, Mr. Bowers makes the following arguments:

"GAO relies on a judgmental observation that a reasonable and prudent employee of my grade [GS-15] and experience [30 years of Government service] must be held responsible for his actions . . .; moreover, I'm perplexed as to how GAO establishes what the grade has to do with being reasonable and prudent.

* * * * *

"I did the reasonable and prudent thing upon receipt of my first pay period statement of earnings and deductions. I examined it. I saw no reason to question the \$53.99 FEGLI deduction and, moreover, when one considers the Federal contribution is 50% of that, the premium seems reasonable to me I've learned such a total premium is comparable with private insurance rates.

* * * * *

"I believe in light of all the circumstances in my situation and the provisions established by the Congress in 5 U.S.C. 8707(d) that on the basis of equity and good conscience, my appeal should be sustained."

Waiver of claims for overpayments to Federal employees of pay and allowances is authorized by 5 U.S.C. § 5584 (1982). That section provides that where collection of such a claim would be against equity and good conscience and not in the best interests of the United States, it may be waived in whole or part unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. 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. Bowers is found to be at fault.

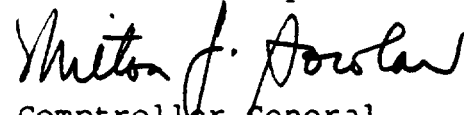
Fault, as used in the statute authorizing waiver, is considered to exist if it is determined that the concerned individual should have known that an error existed but failed to take action to have it corrected. See 4 C.F.R. § 91.5 (1985), and 56 Comp. Gen. 943 (1977). If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review those documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will not be granted. Jack A. Shepherd, B-193831, July 20, 1979. Thus, if an employee is given a Standard Form 50 showing he has FEGLI coverage but his regular Earnings Statements show that the necessary insurance premium deductions are not being made, 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. Rosalie L. Wong, B-199262, March 10, 1981; Annie E. Strom, B-204680, February 23, 1982.

We do not believe that fault may be imputed to Mr. Bowers in this case. Although Mr. Bowers was given a copy of the FEGLI handbook which explains the coverage and the applicable rates, he states, without dispute, that the orientation briefing did not highlight the relatively high cost of optional insurance for his age at maximum coverage. When Mr. Bowers received his first Earnings and Leave Statement he examined it and found the \$53.99 deduction to be reasonable. Considering his age and his belief (albeit erroneous) that the Government contributed 50% of the cost, citing 5 U.S.C. § 8708, he found no reason to question the deduction. We note that under the FEGLI prior to 1981, when Mr. Bowers had been previously employed by the Government, the coverages and costs were less and allocations favored older employees. Under these circumstances, the determinative question is whether the deduction for FEGLI

shown on Mr. Bowers' Earnings and Leave Statement appeared reasonable. If the deduction appears reasonable on its face, we are aware of no reason to expect or require an employee to audit the amount shown. We have been informally advised by one major insurance company headquartered in the Washington, D.C., area that comparable insurance would have factored out to approximately \$99 per pay period for someone of Mr. Bowers' age. We believe that for this and the other above reasons, it was reasonable for Mr. Bowers to believe the FEGLI deduction of \$53.99 to be reasonable.

Further, the error was entirely the fault of the agency. As noted above, the agency's investigation determined that the cause of the error stemmed from a problem in the automated payroll system over which Mr. Bowers exercised no control. No one picked up the error and it would have continued to go undetected, except that about 1 year later, on November 8, 1983, Mr. Bowers questioned the increase in his FEGLI withholding for the prior pay period. The error was then discovered. We believe that it is significant that Mr. Bowers did question the increase in his FEGLI withholding, which represented the correct amount, as this at least suggests that he never really knew what his FEGLI coverage cost. We believe that the above facts clearly support a finding that Mr. Bowers was not at fault in accepting the overpayments. We find that collection action would be against equity and good conscience and not in the best interests of the United States.

Accordingly, the amount of \$5,200 representing the underdeductions for FEGLI premiums is hereby waived.

for 
Comptroller General
of the United States