



The Comptroller General
of the United States

Washington, D.C. 20548

Quinn - PL

Decision

Matter of: Gordon Field, M.D.--Waiver of Erroneous
Overpayments--Insurance Premiums
File: B-224910
Date: June 22, 1987

DIGEST

Employee received overpayments of pay because agency failed to deduct full insurance premiums from his pay. Overpayments may not be waived under 5 U.S.C. § 5584. Record shows that the employee requested the insurance, was covered by the insurance, and was furnished a booklet which explained the coverage and applicable rates. Therefore, employee was partially at fault for not questioning the lack of sufficient deductions for insurance, and since he failed to effectively examine Earnings and Leave Statements provided by agency which would have alerted him to the error.

DECISION

In this decision we hold that Dr. Gordon Field, a physician with the Veterans Administration (VA), may not 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 sustains a denial of his application for waiver under 5 U.S.C. § 5584 made by our Claims Group on March 17, 1986.

BACKGROUND

Dr. Field was appointed to the position of staff physician at the Veterans Administration Outpatient Clinic, Jacksonville, Florida, on April 6, 1983. He had not previously worked for the Federal Government. On April 6, 1983, the first day of his appointment, Dr. Field enrolled in the FEGLI program, electing "Option B-Additional" insurance at 3 times the amount of his salary in addition to the basic coverage. However, the personnel office did not enter on the enrollment form the proper code signifying the additional insurance coverage. Dr. Field received his first Earnings and Leave Statement showing a payroll deduction for life insurance premiums effective for the biweekly pay period ending April 18, 1983. It understated the correct deduction by \$126 because of the failure to include the optional additional coverage, while correctly showing a

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proper deduction for the basic life insurance in the amount by \$17.28. The error continued in successive pay periods and on successive Earnings and Leave Statements until discovered in September 1984 by the agency as a direct result of questions raised by Dr. Field's wife, who was reviewing his Statements on his behalf. Dr. Field has reported that his wife always handled the business and financial aspects of his previous private medical practice. Since it was necessary for Dr. Field's wife to close out the corporation through which he operated his prior private medical practice, and sell their previous home before joining him in Florida, she did not have an earlier opportunity to review his Earnings and Leave Statements. The cumulative effect of the error resulted in the employee being in debt in the amount of \$4,885.20.

The Committee on Waivers and Compromises (Committee) of the VA Regional Office, St. Petersburg, Florida, denied waiver based upon its view that Dr. Field should have known deductions were not being made in the proper amount by reviewing his Earnings and Leave Statement (VA Form 4-5632, August 1981) which he received each pay period. Additionally, the Committee noted the fact that Dr. Field was provided with a booklet on insurance rates at the time of his preemployment interview. The Committee concluded that Dr. Field's failure "to properly reconcile his pay status represents material fault on his part, and establishes a lack of good faith * * *."

The Claims Group sustained the denial of Dr. Field's waiver request by the VA Committee on Waivers, concluding that "[s]ince Dr. Field did not carefully examine his Earnings Statement in a timely manner, we must hold him at least partially at fault in his matter, which statutorily precludes waiver of the claim."

Dr. Field appealed this determination on the basis of Hollis W. Bowers, 65 Comp. Gen. 216 (1986), which Dr. Field believes to be indistinguishable in all material respects from his situation.

DISCUSSION

The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584 (1982), permits such waivers only when there is no 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 the waiver, and when the collection of the erroneous payments would be against equity and good

conscience and not in the best interest of the United States.

The word "fault" as used in 5 U.S.C. § 5584 has been interpreted more broadly than being limited to proven overt acts or omissions by an employee. Fault is considered to exist if in the light of all the facts, it is determined that an employee exercising reasonable diligence should have known that an error existed and taken action to have it corrected. 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. 4 C.F.R. § 91.5(c) and George R. Beecherl, B-192485, November 17, 1978. Employees are under a duty to bring pay questions to the attention of appropriate agency officials. See Vivian J. Lucas, B-190643, July 6, 1978. Consequently, if a notice of personnel action and an Earnings and Leave Statement timely received by the employee clearly reveal an underdeduction of FEGLI premiums, the employee is on notice of the error. The failure of the employee to inspect such documents ordinarily requires the employee to be considered to be at least partially at fault if he fails to take corrective action and waiver will not be granted. Rosalie L. Wong, B-199262, March 10, 1981; Roosevelt W. Royals, B-188822, June 1, 1977; Annie E. Strom, B-204680, February 23, 1982.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. James T. Fielding, B-194594, September 27, 1979.

We cannot find that Dr. Field was free from fault in this case. Dr. Field elected on his appointment date additional FEGLI coverage at 3 times the standard rate. He was furnished with a booklet which explained the coverage available and the applicable rates. Thus, it appears to us that a reasonable and prudent person would have ascertained the cost of this additional insurance and later verified this amount on his Earnings and Leave Statements. Dr. Field did not do this. Therefore, he is not without fault and it would not be against equity and good conscience for him to make restitution.

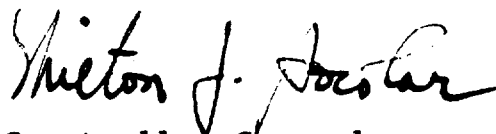
We also note that Dr. Field's beneficiary would have been paid the full amount of the life insurance that he had elected had he died during the period after he elected coverage even though insufficient premium payments were

deducted from his wages. See 5 C.F.R. § 870.203; Ann Wildey, B-204975, January 5, 1982.

Hollis W. Bowers, supra, upon which Dr. Field bases his appeal, affirms the general principle that the employee is expected to review copies of documents given him in order to detect and report overpayments. We held, however, that, under the circumstances of that case, the determinative question was whether the deduction for FEGLI shown on the employee's Earnings and Leave Statements appeared reasonable. If the deduction appears reasonable on its face, we stated that we were aware of no reason to expect or require an employee to audit the amounts shown.

A deciding factor in Bowers was that the biweekly Earnings and Leave Statements received by Mr. Bowers contained only a composite dollar amount for the total of all FEGLI premiums. This required Mr. Bowers to rely on factors external to his Earnings and Leave Statements to determine whether premiums for all elected portions of FEGLI were being withheld from his pay. Contrary to the Earnings and Leave Statements furnished Mr. Bowers, the Earnings and Leave Statements provided to Dr. Field each biweekly pay period contained a blank entitled "Additional Optional" in addition to the blank captioned "Basic." The "Additional Optional" blank was always left blank, when in fact it should have contained the amount of \$126. Therefore, if Dr. Field had examined diligently his Earnings and Leave Statements he would have noticed that no premiums were being withheld for the "Additional Optional" insurance which he had elected. Since the Earnings and Leave Statements provided to Mr. Bowers did not contain a separate blank for "Additional Optional" premiums he could not have as easily determined the absence of a deduction for this additional insurance. Therefore, we do not find Bowers controlling in Dr. Field's case.

Accordingly, Dr. Field's request for waiver is denied.

for 
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