



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Michael J. Smith - Waiver of Erroneous
Overpayments - Insurance Premiums

File: B-229872

Date: September 12, 1988

DIGEST

Waiver of employee's overpayments received after his agency erroneously stopped deducting life insurance premiums is denied because the employee was partially at fault. The employee had the responsibility of reviewing his earnings statements to ascertain whether his life insurance premiums were being properly deducted.

DECISION

In this decision we hold that Mr. Michael J. Smith may not be granted a waiver from repaying erroneous overpayments made to him as a result of nondeduction of Federal Employees' Group Life Insurance premiums. This decision affirms the denial made by our Claims Group of Mr. Smith's application for waiver under 5 U.S.C. § 5584 (1982).^{1/}

BACKGROUND

The record shows that while Mr. Smith was employed with the U.S. Army Corps of Engineers, he elected Federal Employees' Group Life Insurance (FEGLI) coverage. The proper deductions were withheld from his pay while he was employed by the Corps. On December 19, 1982, the employee transferred to the Illinois Air National Guard. However, due to an administrative error, premiums were not deducted from his salary. As a result, he was overpaid \$747.11 from December 19, 1982 through August 31, 1985. During the period of the overpayment, Mr. Smith received leave and earnings statements as well as an SF-50, Notification of Personnel Action, on which his selection of insurance coverage was recorded. The error was eventually discovered

^{1/} Z-2879112, Sept. 25, 1987.

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in 1985 when the employee compared one of his earnings statements with that of a fellow employee.

OPINION

In his appeal, Mr. Smith does not present any additional information but cites a prior decision, Hollis W. Bowers, 65 Comp. Gen. 216 (1986), which he claims is "a case identical to mine" but in which we granted waiver^{2/} "on the basis of agency error and that collection would be against equity conscience and not in the best interest of the United States." Lieutenant Colonel James L. Reid, a comptroller with the Illinois Air National Guard, also points out the similarity and asks that we consider Mr. Smith's case in light of the Bowers decision.

Despite Mr. Smith's reference to the Bowers case as supportive of his position, if we apply the language and rationale used in Bowers to the present case, Mr. Smith's application for waiver must be denied. In Bowers, we held that:

"[i]f 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."
65 Comp. Gen. at 220.3/

We specifically stated in Bowers that:

"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

^{2/} Waiver of claims for overpayments to federal employees of pay and allowances is authorized by 5 U.S.C. § 5584 (1982). That statute 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, the claim may be waived unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

^{3/} See also Alton L. Hawkins, B-221605, May 19, 1986; Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988.


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."
65 Comp. Gen. at 220-221.

In the present case, Mr. Smith had notice of the error because he received an SF-50 showing his correct FEGLI coverage, as well as earnings statements showing that the premium deductions were not being made. He is thus partially at fault in failing to take corrective action earlier.

While we did grant waiver from repayment in the Bowers decision, the reasons for our doing so do not apply here. We granted waiver in Bowers for reasons that went beyond the employee's failure to detect the underdeduction of premiums. The FEGLI deductions shown on Mr. Bowers' leave and earnings statements appeared reasonable to him because he relied on factors external to his earnings and leave statements in determining whether the correct amount of premiums were being withheld from his pay. In the present case, however, Mr. Smith could not have concluded that the deductions appeared reasonable on their face because no deductions for FEGLI were made at all.

The totality of the circumstances in the present case leads us to believe that Mr. Smith did have a reasonable opportunity to detect that insurance premiums were not being deducted. If Mr. Smith had carefully examined his earnings statements at the time he transferred to his new job, he could have discovered and reported the error at that time, preventing the perpetuation of the mistake. Since Mr. Smith did not carefully examine his earnings statements in a timely manner, we must hold him at least partially at fault, which statutorily precludes waiver of the claim.

Accordingly, collection of the overpayments Mr. Smith received because of the erroneous nondeduction of life insurance premiums may not be waived. The settlement action by our Claims Group is sustained.

for 
Comptroller General
of the United States