

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-183113

DATE: JUL 21 1975

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MATTER OF:

Marvin G. Adams - Request for reconsideration of denial of waiver of overpayment of pay

DIGEST:

Where employee requests optional life insurance coverage and agency fails to deduct premium from pay but there is simultaneous increase in basic premium for regular life insurance, our Office cannot grant waiver where optional insurance premium is so much greater than the increase in basic premium that a reasonable man should have made inquiry.

This decision is in response to an appeal to a previous decision of our Office, B-183113, March 31, 1975, which denied a request for a waiver of indebtedness on behalf of Mr. Marvin G. Adams.

Mr. Adams elected optional life insurance coverage under the Federal Employees Group Life Insurance Program on February 14, 1968. Due to administrative error, deductions for the optional coverage were not made from March 4, 1968, through June 24, 1972, when Mr. Adams made a check of his records to verify that he had appropriate coverage. The result was that Mr. Adams was overpaid in the gross amount of \$515.40 for the period.

In our previous decision we noted that we have consistently held that where an employee knows that he is being overpaid, he is precluded from waiver because it cannot be said that the employee is without fault in continuing to accept the erroneous payments. The same conclusion is required where the employee is found to have constructive knowledge of an overpayment.

We stated in our previous decision that when Mr. Adams elected optional life insurance a larger deduction should have been made from his pay and Mr. Adams should have noticed such a change. We then stated, "Nevertheless, Mr. Adams' Earnings and Leave statement continued to indicate the same premium deduction as had been made previously." On the basis of this sentence, Mr. Adams requested and received a copy of his pay record for calendar year 1968 from the Finance and Accounting Division of his employer and forwarded that record to our Office. At the time we issued our decision of March 31, 1975, B-183113, denying his request for waiver of his indebtedness there was on file in our Office a copy of his Civilian

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Pay-Individual Pay Record (AR 37-05) for the year 1968 which was considered at that time. That record indicated that there was a change in his deductions for insurance during the pay period ending March 2, 1968, from \$2 to \$2.75. This change of \$.75 was caused by a general change in the rate structure of which all employees had been given notice. In contrast, the rate at the time for optional life insurance was \$6 per biweekly pay period. In the investigation report the investigating officer reported that Mr. Adams advised him "that he never reviewed his leave and earnings statement; therefore, he was not aware that the optional insurance premium was not being deducted from his pay." The investigating officer then noted that, since the cost of the insurance was \$6 per pay period, he believed Mr. Adams should have been aware that it was not being deducted by reference to the net pay. As we noted in our initial denial of Mr. Adams' request for waiver, Z-2493363-DHT-3, January 16, 1973, one of the purposes for furnishing a leave and earnings statement is to give employees an opportunity to verify deductions being made and to bring to the attention of appropriate officials any errors or omissions. Mr. Adams' negligence in this regard vitiates his request for a waiver.

Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived. An administrative determination was made that a reasonable man would have noticed that there was not a \$6 difference in his net pay and should have made inquiry. Since Mr. Adams did not make inquiry, he cannot be said to be free from fault and the claim against him may not be waived.

Accordingly, we again sustain the denial of the requested waiver.

Paul G. Dembling  
For the Comptroller General  
of the United States