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**DECISION**

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

*[Request for Waiver of Overpayments]*

FILE: B-199262

DATE: March 10 1981

MATTER OF: Rosalie L. Wong - Waiver

**DIGEST:** An employee elected optional life insurance coverage under Federal Employees Group Life Insurance Program. Due to agency's error appropriate deductions for the optional insurance were not made. The employee's request for waiver is denied since she received leave and earnings statements for each pay period and she should have been aware that premiums for optional insurance were not being withheld from her pay. Also during period of nondeduction her SF 50's clearly stated she was covered by optional insurance. Hence she had duty to make inquiry which she failed to do.

This is an appeal from the settlement of our Claims Division which denied Ms. Rosalie L. Wong's request for waiver of collection of optional life insurance premiums. For the reasons stated below, we conclude that waiver may not be granted.

Ms. Wong, an employee of the Department of the Army, applied for optional life insurance on February 16, 1968. Prior to that time she was covered by regular Federal Employees Group Life Insurance (FEGLI). Through administrative error, no deductions were made from her pay for the optional coverage until June 26, 1976, resulting in erroneous overpayments to her totalling \$664.60.

Ms. Wong requested waiver of the above overpayments, but this was denied by our Claims Division on the basis that Ms. Wong should have expected her pay to decrease slightly at the time she took out the optional insurance. Had she checked her pay and then contacted the appropriate officials as to the mistake made, the error could have been corrected, thereby preventing further overpayments.

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Ms. Wong now argues that the erroneous nondeduction for the optional life insurance was not her fault but the fault of her agency. She states that since the payroll office did not process the request for optional life insurance her request for waiver is justified.

The standards under 5 U.S.C. § 5584 for the waiver of claims arising out of erroneous payments of pay or allowances are found at title 4, Code of Federal Regulations, sections 91-93 (1980).

Generally these criteria are met when the erroneous payments occurred through administrative error and 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 a waiver of the claim. As to whether there is fault on the part of the employee we have held that:

"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." B-165663, June 11, 1969.

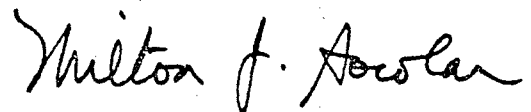
In our opinion, Ms. Wong should have known that on taking out optional life insurance coverage her pay would decrease slightly, but her pay remained constant at the time she took out the optional coverage. The record shows that Ms. Wong received leave and earnings

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statements for each pay period in question. In addition, she received several SF 50's, Notification of Personnel Action, during the period of nondeduction of the premiums, in which it was clearly stated that she was covered by both regular and optional life insurance. Although the payroll office did not deduct the appropriate premiums from her pay, Ms. Wong was in fact covered by the optional insurance when her election was received. 5 C.F.R. § 871.203(a). The beneficiary of Ms. Wong would have recovered her optional insurance had she died during the period after she had elected the insurance even though premium payments were not deducted because of administrative error. B-190175, September 27, 1978.

In view of the above, we find that Ms. Wong was at fault in failing to notify the appropriate agency officials of the fact that optional life insurance premium deductions were not being taken from her pay after she elected additional life insurance. B-197810, March 20, 1980; B-188948, June 15, 1977; and B-190175, September 27, 1978 above.

Accordingly, Ms. Wong's request for waiver is denied.



Acting Comptroller General  
of the United States