

DECISION



DIGEST - L. CP
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-193831

DATE: July 20, 1979

MATTER OF: [REDACTED] --Waiver--Nondeduction
of Insurance Premiums

- DIGEST:
1. Employee who received erroneous overpayments from January 1969 to March 1977 when insurance premiums were not deducted from his pay for Federal Employees Group Life Insurance (FEGLI) coverage, may be granted a partial waiver of the Government's resulting claim against him for the overpayments he received prior to August 1973, since until then he had no reason to suspect he had the insurance coverage. However, when he was notified in August 1973 that he had FEGLI coverage, he took no corrective action, and this fault on his part bars waiver of the overpayments he received thereafter.
 2. Claim of the Government against an employee arising out of overpayments he received when Federal Group Life Insurance (FEGLI) premiums were not deducted from his pay, may not be waived on the basis of the employee's contentions that he did not want FEGLI coverage and received no benefits from it. His beneficiary would have been paid the life insurance had he died during the period of FEGLI coverage, and therefore it is not inequitable to require him to pay for the insurance protection provided.

[REDACTED] requests reconsideration of the action taken by our Claims Division on June 28, 1978, granting only partial waiver of the Government's claim against him arising out of erroneous overpayments of wages he received between January 1969 and March 1977, incident to his employment as a National Guard Technician. In view of the applicable provisions of law and regulation we sustain the Claims Division action.

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It appears that in December 1968 [REDACTED] was employed as a technician at General Mitchell Air National Guard Base, Milwaukee, Wisconsin, and his status was that of a Wisconsin State employee. Pursuant to the National Guard Technicians Act of 1968, Public Law 90-486, approved August 13, 1968, 82 Stat. 755, his status was changed to that of a Federal employee effective January 1, 1969. At that time a United States Civil Service Commission Standard Form 50, "Notification of Personnel Action," was issued announcing his appointment to the Federal position of Aircraft Maintenance Technician, grade WB-12, step 3.

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[REDACTED] became eligible for Federal Employees Group Life Insurance (FEGLI) as the result of his conversion to Federal status, and item 9 of the initial Standard Form 50 showed that he had FEGLI coverage.

[REDACTED] states that he initially indicated in writing that he wished to have such insurance coverage, but he then changed his mind and told his supervisor that he wanted to cancel his coverage. He assumed that the supervisor would take care of the matter, and there is some indication that a new election form was then prepared. However, his desire to cancel his coverage was not communicated to the responsible Technician Personnel Office located in Madison, Wisconsin, and FEGLI coverage was continued for him in accordance with his initial written election. Nevertheless, the local civilian payroll clerk in Milwaukee, who was apparently aware of [REDACTED] attempt to cancel the insurance coverage, did not deduct the FEGLI premiums from his wages. Thus, [REDACTED] received the life insurance coverage without paying the required premiums.

Effective August 5, 1973, [REDACTED] was reassigned to the position of Aircraft Mechanic (Crew Chief), grade WG-12, step 4. On August 2, 1973, a new Standard Form 50 was issued to document this position reassignment. Item 9 of the form showed that he still had FEGLI coverage. Although [REDACTED] was given a copy of the form, he later stated that he did not pay any special attention to it, and he took no corrective action.

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The error was not discovered by accounting and finance officials until March 3, 1977. It was then determined that because [redacted] had received FEGLI coverage between January 1969 and March 1977 without any premiums being deducted from his wages, he had been erroneously overpaid in the total amount of \$960.11.

After he was notified of the Government's \$960.11 claim against him, [redacted] applied for a waiver of that claim. He stated that he had not wanted the FEGLI coverage, and he certified that he was not aware of the fact that he was being overpaid between January 1969 and March 1977. The Air Force Accounting and Finance Center subsequently forwarded [redacted] waiver request to our Claims Division for consideration.

As previously indicated, our Claims Division granted only a partial waiver. In substance, it was concluded that in the circumstances [redacted] might have had no reason to know he was being overpaid between January 1, 1969, and the pay period ending July 21, 1973, and waiver was granted as to the Government's claim against him for the erroneous payments he received during that period, an amount totalling \$430.12. However, waiver was denied as to the balance of the overpayments, totalling \$529.99, which were made from and after the pay period ending August 4, 1973. The denial was based on the fact that [redacted] had been notified by the Standard Form 50 issued on August 2, 1973, that he had FEGLI coverage. It was concluded that his failure to take corrective action at that time placed him in the position of being at least partially at fault in the matter, so that waiver of the balance was unwarranted.

In requesting reconsideration, [redacted] has expressed the belief that he should properly have been granted a waiver of the total amount of the claim against him. In substance, he points out that he is inexperienced in personnel matters, and he says he thought the purpose of the Standard Form 50 issued in August 1973 was solely to effect a position change. He

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suggests that he therefore had no reason to pay any particular attention to all of the entries on that form. He contends that the error could not have been detected by an examination of the information contained in his regular Leave and Earnings Statements, and he asserts he should not be charged with notice of the error relating to the insurance premiums solely on the basis of the August 2, 1973 Standard Form 50 relating to a position change. In addition, he says he did not want the insurance coverage and received no benefit from it. Further, he states that he is a loyal and dedicated employee, has never before been subjected to collection action, and has acted in good faith in the matter. An indorsement submitted by Air National Guard authorities indicates that [REDACTED] is an outstanding employee. The opinion is also expressed that [REDACTED] like the vast majority of personnel employed in maintenance positions, could not reasonably be expected to have much interest or experience in administrative matters. It is suggested that [REDACTED] should not have been expected to know of the error until it was eventually discovered in March 1977 by those having expertise in such matters, and that a complete waiver of the Government's claim would therefore be appropriate.

The authority for the waiver of claims for overpayments to Federal employees of pay and allowances of more than \$500 is contained in 5 U.S.C. § 5584 (1976). 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 in part by the Comptroller General of the United States unless:

** * * in his opinion, there exists in connection with the claim, an 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 * * *

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"Fault," as used in this statutory provision and a similar waiver law applicable to members of the uniformed services, 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 (1978); and 56 Comp. Gen. 943 (1977). If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. See Matter of [REDACTED] B-184480, May 20, 1976; and Matter of [REDACTED] B-191295, July 7, 1978. Thus, if an employee is given a Standard Form 50 showing he has FEGLI coverage but his regular Leave and 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 in the matter if he fails to take corrective action. [REDACTED] supra.

In the present case, it appears that in January 1969 [REDACTED] was furnished a copy of his Standard Form 50 showing that he had FEGLI coverage, but the Leave and Earnings Statements he subsequently received showed that no insurance premiums were being deducted from his wages. Nevertheless, in view of his relative inexperience in personnel matters and his statement that he thought the insurance coverage would be canceled on the basis of his conversation with his supervisor, we conclude that he might not reasonably have been expected to notice the error at that time.

However, when a new Standard Form 50 was issued on August 2, 1973, showing that he still had FEGLI coverage, he was then provided with definite written notice of an error in his personnel and pay records. With respect to the suggestion made that he had no reason to examine that form, we must point out that every Federal employee, regardless of his experience, interests, or work specialty, has a duty to examine his own personnel and pay records when they are furnished to him, and to


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ascertain whether all of the entries are correct. Therefore, we have no alternative but to conclude that [REDACTED] failure to examine the August 2, 1973 Standard Form 50 and to take corrective action at that point placed him in the position of being at least partially at fault in the matter.

With regard to [REDACTED] suggestion that he did not want FEGLI coverage, received no benefit from it, and should therefore have no obligation to pay for it, we note that his beneficiary would have been paid the life insurance had he died during the period after he elected coverage even though no premium payments were deducted from his wages. We do not believe it is against equity and good conscience to require him to pay for the life insurance protection provided. Compare Matter of [REDACTED] B-190175, September 27, 1978.

Finally, with respect to the comments submitted indicating that [REDACTED] is an honest, dedicated, loyal employee, we wish to emphasize that there is no indication of any fraud, misrepresentation or bad faith on his part in this matter. However, as previously indicated, he had a duty to examine the Standard Form 50 that was furnished to him on August 2, 1973, and to check all of the entries for accuracy. His "fault" in not performing that duty bars waiver of the Government's claim for recoupment of the overpayments he received after that date.

Accordingly, we sustain the action taken by our Claims Division in granting waiver of the Government's \$960.11 claim against [REDACTED] in the partial amount of \$430.12, but denying waiver as to the balance of \$529.99.


Deputy Comptroller General
of the United States