

Office of Personnel Management
Retirement and Insurance Group



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Benefits Administration Letter

Number: 95-204

Date: January 13, 1995

SUBJECT: Establishing Procedures for Processing Reconsideration Requests

Purpose

The purpose of this Benefit Administration Letter is to provide guidance to agencies in setting up the administrative review procedures for reconsideration of initial decisions about health benefit and life insurance enrollment issues.

This responsibility, formerly handled by the Office of Personnel Management, was recently delegated to agencies. Final regulations were published in the Federal Register on December 27, 1994.

What is reconsideration?

Reconsideration consists of a review of an initial decision to determine whether the law and regulations were correctly applied to the case. It is the employee's final level of administrative review for enrollment and coverage decisions under the Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) Programs.

The law and regulations set forth the circumstances that allow enrollees to enroll or change enrollment in the FEHB Program and to cancel waivers of basic life insurance and change optional coverage under the Federal Employees' Group Life Insurance Program. The regulations also give the effective dates of enrollments and changes in enrollment.

Initial decisions

When an employing office receives an

employee's SF 2809 (or when an employee

otherwise requests a change in enrollment), it must decide whether or not to accept the employee's health benefits election. The events that allow employees to enroll or change enrollment, and the timeframes within which the changes may be made are set forth in 5 CFR 890.301 and additional guidance is provided in Subchapter S7 of the FEHB Handbook for Personnel and Payroll Offices (formerly FPM Supplement 890-1). The effective date of the change is also based on FEHB regulations, primarily 5 CFR 890.306.

Similarly, when an employing office receives an employee's SF 2817 (or the employee otherwise requests a change in coverage), it must decide whether or not to accept the employee's change in life insurance coverage. By law, basic life insurance coverage is automatic unless the employee waives it. Employees who have basic life insurance coverage may elect or decline optional coverage. The circumstances under which an employee's previous waiver of basic life insurance or declination of optional life insurance may be cancelled and the effective dates of changes in coverage are set forth in 5 CFR parts 870, 871, 872, and 873. Additional guidance is provided in the FEGLI Handbook for Personnel and Payroll Offices (formerly FPM Supplement 870-1).

If the employing office decides that the employee is not eligible to make the change, it must give the employee a written explanation of the reason the change in enrollment or coverage was not allowed. The written decision must include the address of the office making reconsideration decisions, the timeframe for requesting reconsideration (30 days from the date of the written notice), and a statement that a copy of the written decision should be submitted with a request for reconsideration. This written explanation is considered the initial decision.

Deciding what office will make the reconsideration decisions

The office that makes the reconsideration decisions must be at either a higher level or in a different office than the office that made the initial decision.

It is important that you notify the offices that make initial decisions of the identity of the office making reconsideration decisions because they must include that information when they give the initial decision.

Making decisions about retroactive corrections

In some cases, the law or regulations provide for retroactive effective dates. In these cases, there is no need for an employing office to decide whether a retroactive correction is appropriate.

Generally, however, changes are made prospectively. That is, when the agency decides an employee should have been allowed to enroll or change enrollment at some time in the past, it accepts an SF 2809 or SF 2817 from the employee making the change. Under FEHB regulations, the SF 2809 is normally effective the first day of the pay period beginning after the employing office receives the SF 2809. In the case of the SF 2817, the effective date depends on the election being made.

In certain cases, the employing office may consider an employee's request that the change be made retroactive to an earlier date, generally the date it would have been effective if he or she had been able to make a timely election.

Exception: If the administrative error was made before January 1, 1995, the employing agency does not have the authority to make a retroactive correction. Instead, the employee must request a retroactive correction from:

Office of Personnel Management
Retirement and Insurance Group
Office of Insurance Programs

Effective dates

1. Life insurance.
 - The FEGLI law provides that basic life insurance coverage is automatic unless the employee waives it. Therefore, if an agency discovers that an employee should have been covered by basic life insurance, but no withholdings were made, the correction must be made retroactively.
 - See section S4-7 of the FEGLI Handbook for instructions on adjusting premium errors.
 - See subchapter S2 of the FEGLI Handbook for additional information about

effective dates of life insurance coverage and changes in coverage.
 2. Health benefits. See subchapter S7 of the FEHB Handbook for information about effective dates of health benefits enrollments and changes in enrollment.
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Some initial decisions cannot be overruled by reconsideration

Initial decisions that comply with the law and regulations cannot be overruled by reconsideration.

Example 1:

OFEGLI approves the medical evidence submitted by an employee who wants to cancel a waiver of basic life insurance and/or a declination of optional insurance. The employee then elects Option C--Family insurance. The employing office denies the election of Option C and the employee requests reconsideration. The office making the reconsideration decision cannot overrule the employing office because OFEGLI approval of medical evidence does not allow an employee to elect Option C--Family insurance.

Example 2.

An employee has a child who dies within 60 days after birth. After the death of the child, the employee elects Option C--Family coverage based on the birth of the child. The employee requests that the election be made retroactive to the child's birth. Although the employee could elect Option C--Family coverage within 60 days after the birth of the child, the effective date of the election is the day the employing office receives the election. This initial decision to deny a retroactive effective date cannot be overruled by a reconsideration decision. (Employees may submit an election of Option C--Family insurance before an anticipated event that will add a family member to their household --such as marriage or birth--so that it will become effective when the event occurs.)

Example 3.

An employee who had declined optional life insurance coverage separates from his or her position and is reemployed less than 180 days later. The employee elects optional life insurance at the new agency. The employing office denies the election. This initial decision cannot be overruled by reconsideration because previous waivers and declinations remain in effect when an employee goes from one agency to another with a break in service of less than 180 days.

Example 4.

An employee lists parents who live with and are dependent on the employee as family members under his or her FEHB enrollment. The employing office denies coverage of the parents. This initial decision cannot be overruled by reconsideration because the FEHB law does not provide for coverage of an employee's parents as family members.

Although a correct initial decision cannot be

overruled by a reconsideration decision, the employee has the right to request reconsideration so that the initial decision can be reviewed to determine whether it is correct.

**Incontestability
clause**

See BAL 95-203 for information about incontestability.

**Agencies cannot
make decisions
about payment
of claims**

The reconsideration process applies only to enrollment issues. Agencies cannot make decisions about payment of claims.

Example 1.

An employee with Option C--Family has a stillborn child. The employee asks the agency to help him or her file a claim for the Option C--Family benefits. The employing office may explain that benefits are not payable for stillborn children. Nevertheless, if the employee persists, the agency must assist in the filing of the claim. It is the responsibility of the Office of Federal Employees' Group Life Insurance (OFEGLI) to deny the claim.

Example 2.

An employee complains to his or her employing office that his or her plan has refused to pay a claim. The employing offices advises the employee to follow the procedures set forth in the plan's brochure regarding disputed claims. There is no action the employing office itself can take to bring about the payment of the claim.

**What is an equity
and good
conscience
determination?**

Under the FEHB and FEGLI regulations, OPM has retained its authority to make equity and good conscience determinations. This authority allows OPM to order a correction of an administrative error, but it is not a part of the administrative review process. The administrative review process ends with the agency's reconsideration.

OPM does not intend to use its authority to make equity and good conscience decisions simply to "second guess" agency reconsideration decisions. However, OPM, as administrator of the FEHB and FEGLI Programs, must have the ability to overrule an agency decision that is obviously in disregard of law and regulations and has serious adverse consequences for the employee.

The circumstances that would give rise to an order to correct an administrative error on the basis of equity and good conscience are rare. Normally, OPM will inform an employee who asks OPM to overrule an agency's reconsideration decision that the agency's decision is final.

Sample letters

Sample letters are attached as an aid to offices making reconsideration decisions. Agencies may tailor these letters to meet their specific needs.

Job Aid 1:

This sample letter may be used when an employee requests reconsideration, but does not send a written initial decision.

Job Aid 2:

This sample letter denies a reconsideration request from an employee whose election to change health benefits enrollment was not based on an event allowing change in enrollment.

Job Aid 3:

This sample letter denies a request to overrule a FEGLI decision concerning medical insurability.

Abby L. Block

Abby L. Block, Chief
Insurance Policy
and Information Division

**Job Aid 1: Sample letter instructing employee
about obtaining an initial decision**

(Name and address of employee)

Dear (employee's name):

This office does not make initial decisions concerning (health benefits/life insurance) enrollments for employees of (Department or Agency). That is the responsibility of your personnel office. You may request this office to reconsider your personnel office's written decision refusing your election (to enroll or change your health benefits enrollment) (to acquire or increase your life insurance coverage). Since your personnel office has not yet made its decision in writing, it is premature to request this office to issue its reconsideration decision. If your personnel office gives a negative written decision, you may request this office to reconsider it within 30 calendar days from the date of the decision. Please include a copy of the initial decision in your request for reconsideration.

We are forwarding your request to your personnel office at the address shown below so that they may make their initial decision. Your request has been forwarded to:

(name and address of personnel office
responsible for initial decision)

Sincerely,

**Job Aid 2: Sample letter denying a request to
change health benefits enrollment when there was
no event allowing change**

(Name and address of employee)

Dear (employee's name):

This is in response to your letter requesting that this office reconsider your personnel office's initial decision to deny you an opportunity to change your enrollment under the Federal Employees Health Benefits (FEHB) Program. I am sorry, but I must also deny your request.

As you may know, opportunities to enroll or change enrollment in the FEHB Program are tied to the occurrence of certain events. The events that permit an employee to change enrollment and the time limits for submitting an election to change enrollments are listed in section 890.301 of title 5 of the Code of Federal Regulations, as well as on Standard Form 2809, Health Benefits Registration Form.

Every employee is allowed to change plans during open season and there are many other events that allow change as well. It is your responsibility to submit a timely election when a permissible event occurs. Since your request to change your enrollment was not received by your personnel office within the timeframe for any event allowing you to change, I must concur with your personnel office's initial decision.

This is your final administrative review concerning this matter. You have no further reconsideration rights.

Sincerely,

**Job Aid 3: Sample letter denying a request to
overrule an OFEGLI decision
concerning medical insurability**

(Name and address of employee)

Dear (employee's name):

The Office of Federal Employees' Group Life Insurance (OFEGLI) determines whether an applicant's proof of insurability is acceptable based on medical underwriting standards. You do have the right to an administrative reconsideration made by this office of an initial decision made by your employing office concerning your enrollment in the FEGLI Program. However, you do not have the right to an administrative reconsideration of an OFEGLI decision to deny coverage based on medical reasons.

If you have further questions regarding the denial of your request, you or your physician may write to OFEGLI at 200 Park Avenue, New York, NY 10166-0188.

This is your final administrative review concerning this matter. You have no further reconsideration rights.

Sincerely,