

**DECISION**

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

Q 1555

FILE: B-186092

DATE: SEP 27 1976 97968

MATTER OF: Charles B. Shorter--Waiver of overpayment of pay

DIGEST: Waiver is sought under 5 U.S.C. 5584 where employee who left position with one agency to accept position with another agency continued to receive salary payments from former agency for next two pay periods following separation. Waiver is denied since employee was not free from fault in accepting payments and not inquiring as to their correctness.

This action is in response to the appeal of Mr. Charles B. Shorter of the determination of our Claims Division, dated December 15, 1975, denying waiver of erroneous overpayments of pay under the provisions of 5 U.S.C. 5584 (1970).

The record indicates that on August 23, 1970, Mr. Shorter left his position with the Agency for International Development (AID), and he accepted a position with the Peace Corps the following day. However, due to an administrative error, the AID payroll office was not notified of the employee's separation in a timely fashion, and Mr. Shorter received pay checks for the following two pay periods from AID while he was employed and receiving his salary from the Peace Corps. The resulting overpayment was in the amount of \$581.01. It does not appear from the record that Mr. Shorter inquired at that time as to the correctness of these payments, and, on appeal, he states that he assumed these checks represented "final lump-sum payments which I was entitled to."

The authority for the waiver of claims arising out of erroneous payments of pay or allowances is contained in section 5584 of title 5, United States Code, and 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 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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Our regulations implementing that statutory provision, contained in 4 C.F.R. Part 91 (1976), provide, in part, for waiver of an erroneous payment whenever:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case\* \* \*." 4 C.F.R. 91.5.

As noted in our Claims Division settlement, it appears that as a reasonable and prudent employee, Mr. Shorter should have questioned the correctness of his receiving salary payments for the same periods from two different agencies. Mr. Shorter argues that he assumed the checks were lump-sum payments for leave he had accumulated while employed by AID. However, we have been informally advised that the leave system of the Peace Corps is not substantially different from the leave system used by other Federal agencies, and, therefore, Mr. Shorter's leave balance would normally be transferred to the Peace Corps rather than being paid by a lump-sum payment. Further, we note that upon leaving AID Mr. Shorter had an annual leave balance of approximately 346 hours, and, thus, it appears that the checks received from AID, if they had been lump-sum payments, represent less than one-half of the amount due under a lump-sum payment of leave.

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Accordingly, based upon the record before us, we cannot conclude that Mr. Shorter was without fault in accepting the payments and failing to inquire as to the correctness of such payments. We, therefore, must sustain the action of our Claims Division in denying waiver of the overpayment.

E.F. KELLER  
Deputy Comptroller General  
of the United States