

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 2054870
~~60964~~

FILE: B-185509

DATE: JUN 9 1976

MATTER OF: Jerry L. Minor -- Waiver of overpayment
of salary

98852

DIGEST:

Waiver is sought under 5 U.S.C. § 5584 where employee was advised two most recent promotions were erroneous and would be terminated at end of current pay period. Waiver is granted for overpayment during prior pay period and current pay period where employee received checks after notification of administrative error. Notice did not indicate overpayment and under the circumstances employee could not be expected to set aside such overpayment.

This action is in response to the appeal of Mr. Jerry L. Minor of the determination of our Transportation and Claims Division (now Claims Division), dated July 8, 1975, partially denying a waiver of erroneous overpayments of salary under the provisions of 5 U.S.C. § 5584 (Supp. IV, 1974).

The record indicates that Mr. Minor was appointed as a file clerk, grade GS-3, with the Veterans Administration Hospital, Reno, Nevada, on August 8, 1971, and was promoted through the Merit Promotion Program to positions as Purchasing Agent, grade GS-4, on November 14, 1971, Warehouseman, WG-6, on March 5, 1972, and eventually Supervisory General Supply Specialist, grade GS-8, on November 26, 1972. It was determined during a Personnel Management Evaluation conducted by the Civil Service Commission that the latter two promotions were erroneous. Therefore, Mr. Minor was advised on March 6, 1974, that the Veterans Administration, upon direction of the Civil Service Commission, was canceling his latter two promotions effective March 17, 1974, the first day of the next pay period.

On July 8, 1975, our Transportation and Claims Division waived the claim of the United States against Mr. Minor for overpayments that he had received for the period March 5, 1972, through February 16, 1974, on the basis of 5 U.S.C. § 5584 (Supp. IV, 1974), stating that "Mr. Minor had no reason to question the validity of his promotions, and therefore, it can reasonably be said that he is without fault in the matter." However, the Transportation and Claims Division refused to waive the claim in the amount of \$286.40

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for the period February 17, 1974, through March 16, 1974, on the ground that as of March 6, 1974, Mr. Minor was notified of the administrative error and was "cognizant" of the erroneous payment of pay for the pay periods ending March 2, 1974, and March 16, 1974, pay periods for which he had not yet received checks.

The record indicates that on March 6, 1974, Mr. Minor was informed by the Hospital Director that his two most recent promotions were being canceled effective March 17, 1974. Mr. Minor argues that this notification did not indicate that an overpayment or erroneous payment of salary had occurred. The nature of Mr. Minor's job and his length of service in the Federal Government do not raise the presumption that he would have knowledge of the personnel laws, nor should such knowledge be expected. Thus, it would appear that under the circumstances Mr. Minor could not reasonably be expected to determine the amount of overpayment and to set aside that amount from any paychecks he received through the pay period ending March 16, 1974. The notification of administrative error may well have led Mr. Minor into believing that he was entitled to the higher salary until the date that his promotions were to be rescinded.

Based on the foregoing, we conclude that a collection under the claim would be against equity and good conscience and not in the best interests of the United States. Accordingly, pursuant to 5 U.S.C. § 5584, the additional amount of \$286.40 is hereby waived.

R.F. KELLER

Deputy Comptroller General
of the United States