

DECISION

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

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FILE: B-184480

DATE:

MAY 20 1976

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MATTER OF:

Arthur Weiner - Request for waiver of overpayment
of pay

DIGEST:

Employee requests waiver of debt arising because of agency failure to terminate saved pay after end of 2-year salary retention period. Record shows that employee had notice of end of 2-year period, that he regularly received statements of leave and earnings, and that it was his custom to file such forms without reviewing for accuracy. Waiver is denied since, where employee has necessary records, which if reviewed would indicate overpayment existed, and employee fails to review such documents for accuracy, he is not free of fault under standards established by 4 C.F.R. § 91.5 and waiver will be denied.

This action is in response to a request by Mr. Arthur Weiner for reconsideration of the determination of our Transportation and Claims Division (now Claims Division) denying his request for waiver under 5 U.S.C. § 5584 (1970), of an overpayment of basic compensation. The request was forwarded to us by R. F. Benjamin, Chief, Field Services Office, U.S. Army Finance and Accounting Center.

Mr. Weiner was a Procurement Analyst, PM5-33, GS-13, step 5, \$18,996 per annum, employed by the Army Material Command when he was subjected to a reduction-in-force action which resulted in his being placed effective February 8, 1970, as a Procurement Analyst, No. 14037, GS-11, step 10, \$15,478 per annum, with the Picatinny Arsenal, Department of the Army. The SF 50 effecting this personnel action noted that the rate of pay which attaches to grade GS-13, step 5, was saved to Mr. Weiner not to exceed February 7, 1972. The appropriate form (Payroll Change Slip, DA Form 2515) was timely issued to reflect the expiration of the 2-year salary retention period on February 7, 1972. However, the form was not processed by the payroll office and Mr. Weiner continued to be paid at the saved rate through January 23, 1973. Specifically, he received an extra \$23.20 for each of 24 pay periods for a total indebtedness of \$556.80.

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During the period involved, Payroll Change Slips, which contained notations stating that the salary retention period would end on February 7, 1972, were issued to notify Mr. Weiner of annual pay increases in January 1971 and January 1972. Another one was issued in February 1972 to reflect the expiration of the salary retention period. Mr. Weiner states that he did not receive any of these forms. Thus, he claims that he did not have any notice concerning the expiration of the salary retention period, other than the above-mentioned SF 50 and a corrected SF 50 issued in May 1970. He states that these "do not enter into the situation," apparently because they preceded the beginning of the period of overpayment by 2 years. He also states that he relied on the expertise of the Finance and Accounting Office and that the fault for the overpayment lies with that office. The extent to which Mr. Weiner relied on the Finance and Accounting is shown by his statement that when he did receive Payroll Change Slips, they were "filed by me without being reviewed or checked, as were previous ones of the same type, which I received." He continues: "The statement regarding detailed leave and earnings statement issued with each pay check has been treated by me with the same consideration as the foregoing."

At the outset, we cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. This is an essential function in the Government's attempts to reduce payroll errors. Each employee should carefully analyze the pertinent payroll documents provided by his agency to verify the accuracy of such data. Any discrepancies should be immediately reported to the appropriate office for proper remedial action. In this case the record clearly indicates that Mr. Weiner had actual knowledge through an SF 50, issued in February 1970, that his salary retention period would expire effective February 7, 1972. He indicates that he maintained a file of all personnel actions that he received, including the above-mentioned SF 50. He has also stated that he received detailed leave and earnings statements and that he had access to current general schedule salary information. Thus, it appears that had he analyzed the detailed information provided him by his agency, Mr. Weiner would have easily been able to determine that he was being overpaid. Instead, he filed the documents "without being reviewed or checked."

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The authority to waive overpayments of pay and allowances is contained in 5 U.S.C. § 5584 (1970). Subsection (b) of that section prohibits exercise of waiver authority by the Comptroller General:

"(1) if, 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."

Implementing the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1975), provides, in pertinent 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 of 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.
* * *"

In B-180559, March 11, 1974, we said:

"While the above-quoted language [4 C.F.R. § 91.5(c)] refers to an unexplained increase in pay, we

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believe it may reasonably be applied to the receipt of initial salary at a rate in excess of that anticipated."

We believe that the language of 4 C.F.R. § 91.5(c) also may reasonably be applied to the continued receipt of salary where the employee has been given notice that his salary will be reduced at a specified date in the future and the employee's salary does not change after that date. Thus, we believe that a reasonable person, given the facts presented above, would have made an inquiry concerning the correctness of his pay. In this regard, in our decision B-165663, June 11, 1969, we stated that 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 of fault in the matter and the claim against him should not be waived."

In view of the above, the determination of our Transportation and Claims Division denying waiver is sustained.

R.F. HELLER

Deputy Comptroller General
of the United States