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**DECISION**



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

FILE: B-136010

DATE: October 4, 1976

MATTER OF: Leo W. Lefebvre--Waiver of overpayment of  
salary

DIGEST: Reemployed annuitant requests waiver of overpayments of pay where agency failed to deduct annuity from salary received under temporary appointments. Waiver is granted since employee noted on personnel forms that he was receiving annuity and error resulted from agency's failure to process such information into computerized payroll system.

This action is in response to the request from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, reference FI-3, for a determination whether an erroneous payment of salary made to Mr. Leo W. Lefebvre, a former employee of the Forest Service, may be waived under the provisions of 5 U.S.C. 5584 (1970).

The record indicates that Mr. Lefebvre resigned from a position with the Department of the Air Force in 1971 pursuant to a notice of a reduction in force, and, based on 30 years of creditable service, he began receiving a civil service retirement annuity. In March 1974, Mr. Lefebvre applied for temporary employment at Lassen National Forest, California, as a "Fire Lookout", and he was selected for the position of Forestry Aid, grade GS-3. Mr. Lefebvre was employed in that position from June 4 to October 27, 1974, and again from June 1 to September 8, 1975. On September 8, 1975, it was discovered that Mr. Lefebvre's pay had not been reduced by the amount of his annuity as required under 5 U.S.C. 8344 (Supp. IV, 1974), and, in fact, his annuity had exceeded his salary under his temporary appointments in 1974 and 1975. His employment was terminated on the day the error was discovered, and the resulting overpayment of salary and lump-sum leave was in the amount of \$4,937.38, with an unpaid balance for salary for his last pay period and for lump-sum leave in the amount of \$399.74.

The administrative report states that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employer and that the employee had stated that he had no knowledge of the requirement that annuity payments must be

deducted from salary payments. The Forest Service recommends waiver in the amount of \$4,937.38; but not for \$399.74 for the employee's last pay period.

The authority for waiver of erroneous overpayments of pay and allowances (other than for travel and transportation) is contained in section 5584 of title 5, United States Code, and that section provides that where collection of such an overpayment would be against equity and good conscience and not in the best interests of the United States, the overpayment may be waived if there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. In the present case Mr. Lefebvre clearly noted on his SF-171 upon applying for the temporary positions that he was currently receiving a civil service annuity, and that fact was also indicated on his SF-50. However, as reported in the administrative report, the employing office failed to process the correct information into the agency's computerized personnel and pay system, and, thus, it appears clear that the overpayment resulted from an administrative error. Furthermore, it also appears that there is no indication of fault or lack of good faith on the part of the employee in the present case.

The agency recommends waiver of all of the overpayment except for the amount representing salary for the last pay period and lump-sum leave, or \$399.74. The administrative report does not state a reason why waiver is not recommended for this payment, but we have been informally advised that one factor is that Mr. Lefebvre has not actually received this payment. It appears that Mr. Lefebvre was removed from his position the same day the error was discovered and brought to his attention, and, under the circumstances, there does not appear to be any indication of fault or lack of good faith on the part of Mr. Lefebvre with respect to this payment. In view of our decisions permitting waiver where services have been rendered to the Government in good faith but payment has not been made, we conclude that Mr. Lefebvre may be paid for salary earned in the last pay period and for lump-sum leave. See 55 Comp. Gen. 109 (1975); 52 id. 700 (1973); and B-183850, March 18, 1976.

Therefore, we conclude that a collection of the overpayments would be against equity and good conscience and not in the best

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interests of the United States. Accordingly, the overpayments in the amount of \$4,937.38 are hereby waived under the authority of 5 U.S.C. 5584 and the amount of \$399.74 may be certified for payment if otherwise correct.

Deputy

  
Comptroller General  
of the United States