

26800
00897

Marilynn Eaton
Civ. Pers.

DECISION



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

FILE: B-186562

DATE: March 11, 1977

MATTER OF: William White - Waiver

DIGEST: Reemployed annuitant was erroneously overpaid pay because agency believed no deduction was required from his pay for year until pay and annuity exceeded annual pay. Overpayment is waived since employee was not notified of correct method of reducing pay by annuity allocable to period of employment or of proper pay rate and, although he was financial manager, his specialty was supply, not personnel law.

William J. White, a reemployed annuitant, appeals the denial by our Claims Division of his request for waiver of a claim against him by the United States for recovery of \$1,945.27 in erroneous salary payments.

Mr. White, a Government employee for more than 27 years, retired in 1973 when he was a financial manager, grade GS-11, step 7, at the Naval Air Station, Willow Grove, Pennsylvania. He was reemployed at the express request of the Commanding Officer of the Naval Air Station in the same position and grade which he had held immediately before retirement. The appointment, effective July 18, 1973, was limited to 60 days but was renewed continuously on a 30-day basis until April 15, 1974. During this period, the number of hours which Mr. White worked varied to suit both his own and the Navy's convenience and ranged from 8 to 53 hours biweekly, with an average of about 32 hours biweekly.

The net overpayments of pay totalled \$1,574.85 (\$1,945.27 before Federal and state withholding taxes) was due to an error in deducting Mr. White's annuity payments from his salary, as required by 5 U.S.C. 8344 (1970). Under that section, an amount equal to the annuity allocable to the actual period of reemployment must be deducted from a reemployed annuitant's salary. The administrative report submitted by the Naval Air Development Center, Warminster, Pennsylvania, states that the payroll office computed Mr. White's maximum yearly earnings, recognizing that they could not

B-186562

exceed the difference between the salary for the position to which he had been appointed and the amount of his annual annuity. Until he reached that maximum, however, he was believed eligible to be paid at the regular rate for his grade and step.

The correct method for determining a reemployed annuitant's salary, prescribed by Federal Personnel Manual Supplement 831-1, S15-7, is to convert his daily or hourly rate of pay to its annual equivalent, 260 days or 2,080 hours; this equivalent must then be reduced by the amount of the annuity, and the balance reconverted to a daily or hourly rate to be paid during the actual period of reemployment.

The error was discovered on May 7, 1974, after Mr. White's termination of employment, and he was notified of it June 14, 1974. Mr. White in a letter dated August 9, 1974, stated that he had no knowledge of the erroneous payments until he received the June 14 letter and requested waiver of the indebtedness.

The Navy Accounting and Finance Center recommended denial of the request for waiver of the debt on the ground that Mr. White knew, or should have known, through discussions with the Civilian Personnel Department or through reading of the Civil Service Commission pamphlet, "Your Retirement System," that his annuity was required to be deducted from his salary in order to determine his correct rate of reemployment pay. Failure to reduce the hourly rate of pay, the Navy contends, was an obvious error which should have caused Mr. White to question the correctness of his salary. Our Claims Division concurred and denied waiver of his salary.

The Comptroller General is authorized by 5 U.S.C. 5584 to waive claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses, if collection would be "against equity and good conscience and not in the best interests of the United States." Such authority may not be exercised if there is "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 statute, 4 Code of Federal Regulations (CFR) 91.5(c)(1976), states in pertinent part that:

"* * *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

B-186562

of pay and allowances under this standard necessarily must depend upon the facts and circumstances existing in the particular case.* * *

We have held that this language applies not only to unexplained increases in pay, but also to receipt of an initial salary at a rate higher than expected and to continued receipt of the same salary when a reduction is expected. B-184480, May 20, 1976, citing B-180559, March 11, 1974.

The question presented here is whether Mr. White's actual or constructive knowledge that his salary as a reemployed annuitant would be less than he had earned previously in the same grade and step, and his failure to question receipt of the same salary during the period which he was reemployed, precludes waiver of his debt on grounds of fault. For the following reasons, we believe that it does not.

Even if we assume that Mr. White knew his maximum yearly earnings could not exceed the difference between the salary for the position to which he had been appointed and the amount of his annual annuity, there is nothing in the record to indicate that he knew that the correct method for calculating these earnings was on a daily or hourly basis. Since he was employed for less than a full year during his employment in 1973 and 1974, he may have believed, as the payroll office did, that he was entitled to earn the maximum amount in that time.

The record does not show whether Mr. White received biweekly earnings and leave statements which he failed to verify, therefore precluding waiver. B-185735, June 8, 1976; B-176546, September 8, 1972, and cases cited therein. Moreover, examination of such statements would not have necessarily have put him on notice of the overpayments since he had not been advised of the correct hourly rate he should have received. Also, since Mr. White never worked more than 53 hours in a payroll period, he never received a pay check for a full biweekly pay period which could have alerted him to the fact that no deduction of the proportionate amount of his annuity was being deducted.

Although Mr. White was a financial manager, his specialty at the Naval Air Station was supply, not personnel law. There is no reason, other than his long term of Government service, to assume that he was familiar with payment regulations or practices. See generally B-184182, July 22, 1976; B-182188, January 22, 1975; B-180137, December 28, 1973. This distinguishes his case from B-184624, August 5, 1976, and B-179135, August 10, 1973, in which we have denied waiver because the employee was considered to have a knowledge of personnel law.

B-186562

Considering the above circumstances, we do not believe that the record establishes constructive knowledge sufficient to indicate fraud, misrepresentation, fault, or lack of good faith on his part. In view of this and since the overpayments of pay resulted from administrative error, the indebtedness of \$1,945.27 is hereby waived under the authority of 5 U.S.C. 5584.

Acting  Comptroller General
of the United States