

DOCUMENT RESUME

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[Waiver of Erroneous Salary Payments Denied]. B-188104. June 9, 1977. 3 pp.

Decision re: Harry E. Polk, Sr.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Treasury: Office of Equal Opportunity Program.

Authority: 5 U.S.C. 8344. 5 U.S.C. 5584 (Supp. IV). 4 C.F.R. 91.5(c). B-184624 (1976). B-174301 (1971).

Reconsideration was requested of a denial of waiver of salary overpayment for a reemployed annuitant resulting from agency failure to deduct his annuity. Denial of the waiver was affirmed since the employee should have been aware of the overpayment of \$60 per pay period after his step increase was processed. (HTW)

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DECISION

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

FILE: B-188104

DATE: June 9, 1977

MATTER OF: Harry E. Polk, Sr. - waiver of erroneous salary payments

DIGEST: Due to administrative error in processing step increase, agency failed to deduct annuity from reemployed annuitant's salary for 2 years. Waiver of overpayment is denied. Employee received step increase of \$592 per year and should have been aware of overpayment of \$60 per pay period after step increase was processed.

This action is in response to a letter received in our Claims Division on April 1, 1976, from Mr. Harry E. Polk, Sr., requesting reconsideration of the action DWZ-2601115-KBH-2, dated December 24, 1975, of our Claims Division, which denied Mr. Polk's request for waiver of the claim against him by the United States for \$3,331.20 in erroneous salary payments.

Mr. Polk was hired on March 10, 1969, by the Department of the Treasury as a reemployed annuitant in the Office of the Secretary, Office of the General Counsel, Office of Equal Opportunity Program, as a Contract Compliance Specialist, grade GS-12, step 1. He was promoted to GS-13, step 1, effective March 22, 1970.

Until March 21, 1971, an appropriate portion of his annuity was deducted each pay period from his salary in accordance with 5 U.S.C. § 8344 (1970). On March 21, 1971, Mr. Polk received a step increase from grade GS-13, step 1, to grade GS-13, step 2. Due to an administrative error which occurred when processing the step increase, the instructions for deducting the annuity were excluded from the Payroll Change Slip. Likewise, the instructions for deducting the annuity were omitted on the Payroll Change Slip when Mr. Polk received a step increase on March 19, 1972. As a result Mr. Polk received overpayments of pay from March 21, 1971, to March 17, 1973. Mr. Polk had received erroneous overpayments ranging from \$60 to \$66.40 per pay period for a period of 104 weeks.

Mr. Polk requested waiver of his debt under 5 U.S.C. § 5584 (Supp. IV, 1974) on the grounds that collection of the debt would be against equity and good conscience and not in the best interest of the United States. The agency stated that there was no indication

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of fraud, misrepresentation, fault or lack of good faith by Mr. Polk and it recommended waiver of the debt. Our Claims Division stated that under the Standards of Waiver of Claims for Erroneous Payment of Pay and Allowances issued pursuant to 5 U.S.C. § 5584 (Supp. IV, 1974) "(a)ny 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 the appropriate officials." 4 C.F.R. § 91.5(c) (1976). Our Claims Division found that Mr. Polk should have known that an \$83.20 increase per pay period, instead of \$23.20 based on his step increase of \$592 per annum, was too large an increase to be attributable to a step increase alone. His request for waiver was denied on the ground that his failure to notice and report a difference of such magnitude placed the onus of partial fault on him.

Mr. Polk appeals the finding of our Claims Division on the grounds that the erroneous overpayments were masked by his step increase, that the erroneous overpayments were only \$60 to \$66.40 a pay period not \$83.20, and that he did not receive an Employee's Earning Statement after receiving his step increase until November 13, 1971.

At the outset of his reemployment, Mr. Polk noted that his Employee Earning Statement failed to provide a space for noting annuity deductions. Therefore, he inquired about his annuity deductions and was informed that they were being made even though the Employee Earning Statements he received did not so indicate. Also, the annual salary shown on the Employee Earning Statement was the net of his annual salary less the annuity deduction. Therefore, the fact that he may not have received an Employee Earning Statement after his step increase of March 21, 1971, would have no bearing on his knowledge or lack of knowledge regarding the erroneous payments.

However, the record indicates that the annuity deduction was noted in brackets in the box marked "Salary" on the Standard Form 50, Notification of Personnel Action, on numerous occasions; e.g., upon his initial reemployment, his later reassignment, his promotion to grade GS-13, his change in service computation date, his conversion to career tenure, his change in occupation code, etc. It also was included on the Standard Form 1125, Payroll Change Slip, when he

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received his first step increase. But it was absent from the Payroll Change Slip dated March 1, 1971, which served as notification of his step increase to grade GS-13, step 2, effective March 21, 1971. The annuity deduction was also absent on the Payroll Change Slip showing the step 3 increase effective March 19, 1972.

In view of the fact that the annuity deductions were noted under the headings for salary on the Notification of Personnel Action forms and the Payroll Change Slip for his prior step increase, we believe that Mr. Polk should have been aware of the absence of an annuity deduction notation on the Payroll Change Slip of March 1, 1971. Also, in view of Mr. Polk's position in his agency, we believe that he should have been familiar with the approximate magnitude of a step increase and should have been aware of the approximate salary increase that would result from his step increase. We believe that an overpayment of \$60 per pay period is a substantial sum which, even when masked by a concurrent step increase, should have been obvious to a person in Mr. Polk's position. See Matter of Delores E. Woods, B-184624, August 5, 1976; B-174301, October 22, 1971.

Accordingly, the denial of waiver by our Claims Division is affirmed.

R. F. K. 114
Deputy Comptroller General
of the United States