

DOCUMENT RESUME

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[Waiver of Overpayment of Compensation]. B-188945. June 24, 1977. 4 pp.

Decision re: Lloyd L. Wilson; by Robert P. 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: Marine Corps.

Authority: 5 U.S.C. 5584 (Supp. IV). 4 C.F.R. 91-93. B-174059 (1971). B-173386 (1971). B-171944 (1971). B-165663 (1969). B-183113 (1975).

Due to an administrative error, an increase in premium rate on employee's optional life insurance policy was not reflected in payroll deduction, resulting in salary overpayments. On May 25, 1973, all employees received Civilian Personnel Bulletin listing current rates for each age group, putting the employee on constructive notice of overpayment after that date. A previous decision granting only partial waiver before that date was sustained. (Author/DJM)

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DECISION



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

*CAPLAN
Civ. Per.*

FILE: B-188945

DATE: June 24, 1977

**MATTER OF: Lloyd L. Wilson - Waiver of Overpayment
of Compensation**

DIGEST: Employee entering 55-to-59 age group incurred increase in premium rates on optional life insurance policy. Due to administrative error, increase was not reflected in payroll deduction, resulting in salary overpayments. Waiver may not be granted for overpayments after May 25, 1973, because on that date Civilian Personnel Bulletin was circulated to all employees listing current rates for each age group. May 25, 1973 Bulletin put the employee on constructive notice of overpayments after that date.

This action is in response to an appeal of the action of our Claims Division, Z-2583147-105, dated February 24, 1977, which denied Mr. Lloyd L. Wilson a full waiver of the claim against him by the United States of erroneous salary overpayments.

The record indicates that Mr. Wilson, a retired employee of the Marine Corps, was overpaid in the amount of \$688.50 between January 14, 1972, through January 9, 1975, due to underdeductions from his paycheck for optional life insurance premiums. Mr. Wilson's premium rates automatically increased upon entry into the 55-to-59 age group. However, due to an administrative error, the increase was never reflected in the deductions from his paycheck. Upon discovering the error, his agency corrected the error and informed Mr. Wilson that he had been erroneously overpaid in the amount of \$688.50. Since the overpayment was the result of an administrative error and Mr. Wilson believed that there was no indication of fraud, misrepresentation, fault or lack of good faith on his part, he requested waiver of the debt under the provisions of 5 U.S.C. § 5584 (Supp. IV, 1974). The Navy Accounting and Finance Center recommended only partial waiver of the debt in the amount of \$414, representing only those overpayments received prior to May 25, 1973, on the grounds that Mr. Wilson was aware of the proper amount to be deducted after that date. On that date a Civilian Personnel Bulletin was circulated to all employees informing them of the optional life insurance premium rates prevailing at that time. It stated, in part, as follows:

B-188945

Biweekly Premium

<u>"*Age Group</u>	<u>Present</u>	<u>New</u>
Under 35	\$ 1.30	\$.80
35 to 39	1.70	1.20
40 to 44	2.40	1.90
45 to 49	3.60	2.90
50 to 54	5.50	4.50
55 to 59	17.00	10.50
60 and over	19.00	14.00

***Changes in January following birthday"**

Therefore, the Navy concluded that "it is reasonable to assume that all employees were made aware of current optional life insurance rates at that time."

Our Claims Division concurred in the recommendation of the Department of the Navy to waive \$414 and to deny waiver of \$274.50 representing overpayments after the May 25, 1973 announcement of optional life insurance premium rates.

Mr. Wilson now requests that we reconsider the decision of our Claims Division on the grounds that it is against equity and good conscience to require him to repay the \$274.50 when the error was caused by the agency, and it took the agency 3 years to discover its error. Since he is retired on "a very meager existence income" and his house and all possessions have been destroyed by fire, he requests complete relief from this financial obligation.

Waiver of an erroneous salary overpayment may be granted by this Office in accordance with 5 U.S.C. § 5584 (Supp. IV, 1974). Implementing regulations found in the Code of Federal Regulations, chapter 4, parts 91 through 93, set the standards to be followed in waiver cases. In 4 C.F.R. part 91.5(c) the general standard for granting waiver is stated as follows:

"(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

B-188945

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 or any other person having an interest in obtaining a waiver of the claim. * * * Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *

We have consistently held that where an employee knows that he is being overpaid, he is precluded from waiver under these standards because it cannot be said that the employee is without fault in continuing to accept the erroneous payments. See B-174059, October 6, 1971; B-173386, October 8, 1971; B-171944, March 23, 1971. The same conclusion is required when an employee is found to have constructive knowledge of an overpayment. B-183113, March 31, 1975, and cases cited therein.

Specifically, we have held that:

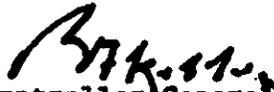
"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. 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 from fault in the matter and the claim against him should not be waived." B-165663, June 11, 1969, quoted in B-183113, March 31, 1975.

Although Mr. Wilson states that he had no knowledge of the overpayment until his agency discovered the error and notified him of his debt, we must hold Mr. Wilson to constructive notice of the error after the circulation of the May 25, 1973, notice of prevailing optional life insurance premium rates. We believe that a reasonable person who has elected optional life insurance would have read the Civilian Personnel Bulletin which was circulated on

B-188945

May 25, 1973, to all employees. Since the Bulletin specifically delineated the insurance premium rates for each age group, we believe a reasonable person would have noted the disparity between the prevailing rate and his deductions and therefore make inquiry with his personnel office as to the correctness of his payment.

Accordingly, we sustain the action of our Claims Division granting only partial waiver of Mr. Wilson's claim.


Deputy Comptroller General
of the United States