

DOCUMENT RESUME

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[Waiver of Overpayment]. B-189385. August 10, 1977. 3 pp.

Decision re: Simon B. Guedea; 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 Air Force.

Authority: 5 U.S.C. 5584. B-188822 (1977). B-184480 (1976).

A Federal employee appealed the denial of his application for waiver of a claim for overpayment of compensation. The employee enrolled in a health benefits program, but the agency erroneously failed to make appropriate payroll deductions. The request for waiver of the debt was denied; it was the employee's fault for failing to verify the correctness of his compensation as indicated on the earnings statements furnished to him by the employing agency. (Author/SC)

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Wm H. Guedea
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DECISION

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

FILE: B-189385

DATE: August 10, 1977

MATTER OF: Simon B. Guedea - Waiver of Overpayment

DIGEST: Employee enrolled in health benefits program, but agency erroneously failed to make appropriate payroll deductions, resulting in overpayment of compensation. Request for waiver of debt is denied in view of employee's fault for failing to verify correctness of compensation as indicated on earnings statements furnished to him by employing agency.

This action concerns the appeal by Mr. Simon B. Guedea from the denial by our Claims Division of his application for waiver of the claim by the United States against him for an overpayment of compensation in the amount of \$2,142.30. The overpayment resulted from insufficient payroll deductions for a health plan in which Mr. Guedea participated as an employee of the Department of the Air Force. Mr. Guedea had requested waiver of the claim under the provisions of 5 U.S.C. § 5584.

The record indicates that on January 22, 1969, Mr. Guedea executed a Health Benefits Registration Form, SF 2809, wherein he enrolled in a high option Blue Cross and Blue Shield program for himself and his family. His coverage under the plan became effective on February 9, 1969. This action should have resulted in an additional payroll deduction in the amount of \$12.16 for health benefits. Due to an administrative error, however, no such payroll deduction was made from February 9, 1969, until November 9, 1974. The overpayment was administratively discovered on October 2, 1974, and Mr. Guedea's application for waiver was made during October 1974.

The request for waiver of the overpayment was forwarded to our Claims Division by the Comptroller of the Air Force, who recommended that the application be denied. This recommendation was based on the fact that Mr. Guedea was furnished earnings and leave statements identifying the deductions from pay, and that he was aware that an additional deduction should have been made because he had voluntarily applied for the health benefits.

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In a letter dated March 18, 1977, DW-Z-2609680-106, the Claims Division disallowed Mr. Guedea's request on the grounds that he was at fault for failure to report the erroneous overpayment. This conclusion was based on the fact that although Mr. Guedea received earnings and leave statements throughout the period in question, he did not notice or report the failure to make a deduction for health benefits.

In appealing the Claims Division settlement, Mr. Guedea has not controverted the fact that he received earnings and leave statements, but insists that he was unaware of the overpayment because he customarily endorsed his check without reading the statement. In addition, it is his contention that it was the employing agency's responsibility to audit its financial records, and that to require employees to verify the earnings and leave statements for the accuracy of the compensation and deductions is "passing the buck."

The statutory authority for our consideration of this request for waiver is found at 5 U.S.C. § 5584, which permits the waiver of a claim of the United States arising out of an erroneous payment of pay and allowances. Under the express terms of the statute, waiver may not be made if there exists, in connection with the claim, an indication of fault or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. Therefore, if it is determined that, under the circumstances, a reasonable man would have made inquiry as to the correctness of payment, but the employee did not, then the employee is not free from fault, and the claim against him may not be waived. Matter of Roosevelt W. Royals, B-188822, June 1, 1977.

Generally, where an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. Matter of Arthur Weiner, B-184480, May 20, 1976. This rule is particularly relevant in the case of earnings and leave statements. As we stated in Weiner, we cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. Such review, and reporting of discrepancies for remedial action, is an essential function in the Government's attempt to reduce payroll errors. Thus, our Office has long held that a waiver of indebtedness will not be granted where it appears

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that the employee did not verify the information provided on his payroll change slips or leave and earnings statements. See Royals, supra, and cases cited therein. Mr. Guedea suggests that such a requirement constitutes "passing the buck" from the agency to the employee. We agree that the employee's agency has a responsibility to prepare proper payrolls and the duty to take steps to ensure that this responsibility is properly discharged. The employee, however, has the responsibility of verifying the correctness of the payments he receives, and where a reasonable person would have made inquiry but the employee did not, then he is not free from fault, and the claim may not be waived. Royals, supra.

As noted above, Mr. Guedea stated that he endorsed his checks without reviewing the earnings and leave statements furnished to him. His failure to do so, however, constitutes fault, and, under 5 U.S.C. § 5584(b)(1) precludes waiver of the Government's claim against him.

Accordingly, we sustain the action of the Claims Division in denying Mr. Guedea's application for waiver.


Deputy Comptroller General
of the United States