

DOCUMENT RESUME

03198 - [32313442]

[Waiver of Overpayment of Compensation]. B-188874. August 17, 1977. 4 pp. + 2 enclosures (2 pp.).

Decision re: Leon L. Snell; 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: Department of the Army: Corps of Engineers, Jacksonville, FL.

Authority: 5 U.S.C. 5584. 5 U.S.C. 8344. 4 C.F.R. 91.5(c). B-184480 (1976). P-180559 (1974).

A reemployed annuitant appealed the denial of his request for waiver of a claim against him for recovery of erroneous salary payments. The annuitant was erroneously overpaid compensation due to the failure of the employing agency to reduce his pay by the amount of the annuity. The waiver was granted since the annuitant did not conceal the fact that he was an annuitant, nor was he notified of the correct method of reducing his pay by the annuity. There was no evidence of fraud, misrepresentation, or lack of good faith on the part of the employee. (Author/SC)

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DECISION



V. D. ...

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

FILE: B-188874

DATE: August 17, 1977

MATTER OF: Leon L. Snell - Waiver of overpayment of
compensation

DIGEST: Reemployed annuitant was erroneously over-
paid compensation due to failure of employ-
ing agency to reduce pay by amount of
annuity. Waiver is granted since annuitant
did not conceal fact that he was annuitant.
Further employee was not notified of cor-
rect method of reducing pay by annuity, and
no evidence was found of fraud, misrepres-
entation, or lack of good faith, on part
of employee.

Mr. Leon L. Snell, a reemployed annuitant, appeals the
denial by our Claims Division dated November 1, 1976, of his
request for waiver of a claim against him by the United States
for recovery of \$8,41.56 in erroneous salary payments.

Mr. Snell, who retired from the Federal Government effective
April 14, 1972, was temporarily reemployed as a Crane Operator,
WG-11, step 3, effective October 2, 1972. The appointment was
limited to 90 days but was renewed continuously until March 30,
1975. The overpayments were made for the period October 7,
1972, through April 6, 1974.

The overpayments were due to a payroll clerk's failure to
deduct Mr. Snell's annuity payments from his salary, as required
by 5 U.S.C. § 8344 (1970). Under this section an amount equal
to the annuity allocable to the actual period of reemployment
must be deducted from a reemployed annuitant's salary. The
error was discovered in April 1974, and Mr. Snell was notified
of it on May 13, 1974. Mr. Snell in a letter dated November 30,
1976, stated that he had no knowledge of the erroneous payments
until he was formally notified and asked reconsideration of his
requested waiver of the indebtedness.

The Corps of Engineers, Jacksonville District, recommended
approval of the request for waiver. The request was endorsed
by the disbursing officer, who was also the investigating officer,
for the following reasons:

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"Mr. Snell originally worked and was reemployed as a crane operator at our Clewiston Area Office in Clewiston, Florida, which is a small, rural community located on the lower side of Lake Okeechobee and approximately 300 miles distant from the District Office in Jacksonville. All personnel administration matters are conducted from the District Office; therefore, Mr. Snell had no direct orientation in connection with his reemployment. Also, by the nature of his duties, Mr. Snell is far removed from administrative matters and had no cause to have knowledge of salary provisions for reemployed annuitants. It was not common knowledge to personnel within the Clewiston Office that reemployed annuitants' salaries should be reduced until after Mr. Snell's erroneous payment was discovered and announced. Based upon my investigation of the matter, which included discussions with Mr. Snell and his supervisors, I believe that he was not informed that his salary should be reduced by the amount of his annuity.

"It is requested that Mr. Snell's application for waiver be reconsidered and I recommend that waiver action be approved. The claim did arise through administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person interested in obtaining a waiver of the claim and collection of the overpayment would be against equity and good conscience and not in the best interests of the United States."

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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 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.

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 Mr. Snell's part. We conclude that a collection under the claim would be against equity and good conscience and not in the best interests of the United States. In view of this and since the overpayments of pay resulted from administrative error, the indebtedness of \$8,241.56 is hereby waived under the authority of 5 U.S.C. § 5584.

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The record indicates that deductions may have already been made from Mr. Snell's annuity checks in satisfaction of the claim. A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted, is entitled, under 5 U.S.C. § 5584(c) to the extent of the waiver, to a refund. Therefore, Mr. Snell may file a claim for refund of any amount that may have been collected from him in satisfaction of the debt.

Deputy

Atkinson
Comptroller General
of the United States

V. Blum
CP

AUG 17 1977

Director, Claims Division

Dwight **Comptroller General** **R.F. KELLEY**

**Law L. Snell - Waiver of overpayment of compensation -
B-12274-G.M.**

Reference is made to your file B-2579995 forwarded here on April 13, 1977, in connection with Mr. Snell's appeal from your denial of his request for waiver of an overpayment of compensation. We have waived the overpayment by our decision of today, B-12274, copy attached.

Attachments



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

Herbert Hoover
CP

B-188874

AUG 17 1977

The Honorable L. A. Bafalis
House of Representatives

Dear Mr. Bafalis:

Further reference is made to your letter dated March 15, 1977, with enclosures, on behalf of Mr. Leon L. Snell concerning his request for waiver of his indebtedness to the United States for an overpayment of compensation to him.

Enclosed is a copy of our decision of today B-188874 whereby we have waived the overpayment. The enclosures received with your letter of March 15, 1977, are returned as requested.

Sincerely yours,

R.F. KELLER

Deputy

Comptroller General
of the United States

Enclosures