

DOCUMENT RESUME

03202 - [A2353486]

[Request for Waiver of Overpayment of Pay]. B-189657. August 18, 1977. 3 pp. + 3 enclosures (3 pp.).

Decision re: Thomas K. Mahulu; 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 Navy.

Authority: 5 U.S.C. 5584 (Supp. IV). 4 C.F.R. 91.5. B-188803 (1977). B-167804 (1976).

A Federal employee requested reconsideration of the denial of his request for waiver of erroneous overpayments of pay. Although the employee notified the personnel office when he received an unexplained increase in pay, he did nothing further to have the error corrected when he continued to receive the overpayments. Since the employee was aware of the error and did not set aside the amount of the overpayments in anticipation of refunding them when the error was corrected, the request for waiver was denied. (Author/SC)

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**DECISION**



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

**FILE:** B-189657

**DATE:** August 18, 1977

**MATTER OF:** Thomas K. Nahulu - Request for Waiver of Overpayment of Pay

**DIGEST:** Employee received unexplained increase in pay and notified personnel office. He continued to receive overpayments for over a year yet did nothing more to have error corrected. Since employee was aware of erroneous overpayments and did not set aside amount of overpayments in anticipation of refunding them to United States when error was corrected, request for waiver is denied. 5 U.S.C. § 5584 (Supp. IV, 1974).

This action is in response to the request dated June 14, 1977, from Mr. Thomas K. Nahulu, a civilian employee of the Department of the Navy, for reconsideration of the action of our Claims Division on April 19, 1977, which denied his request for waiver of erroneous overpayments of pay made to him during the period from August 5, 1974, through August 15, 1975.

The record shows that Mr. Nahulu was employed as a Supervisory Production Controller grade GS-12, step 7, at \$20,995 per annum. Effective July 1, 1974, Mr. Nahulu was downgraded to Supervisory Production Controller grade GS-10, step 10, with retained rate of pay of \$11.60 per hour. On July 21, 1974, Mr. Nahulu was promoted to Supervisory Planner and Estimator, WN-7, step 5, at his retained rate of pay of \$11.60 per hour. On August 4, 1974, there was an automatic pay adjustment for all wage board employees. Since Mr. Nahulu's retained rate of pay of \$11.60 per hour was already higher than the maximum rate of WN-7, his rate of pay could not properly be increased to reflect the wage adjustment. However, the personnel office failed to submit a Standard Form 1126 for Mr. Nahulu indicating that he was being paid at a retained rate and, therefore, his rate of pay was incorrectly increased to \$12.46 per hour. Mr. Nahulu was erroneously paid at the rate of \$12.46 per hour instead of \$11.60 per hour from August 5, 1974, through August 15, 1975, resulting in an overpayment of \$1,920.17.

Our Claims Division denied Mr. Nahulu's request for waiver under 5 U.S.C. § 5584 (Supp. IV, 1974) on April 19, 1977, on the

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basis that Mr. Nahulu was aware that he was being overpaid as early as August 1974. Accordingly, the Claims Division found Mr. Nahulu to be at least partly at fault and denied his request for waiver. Upon reconsideration, we arrive at the same conclusion.

The submissions clearly show that Mr. Nahulu was aware of the overpayments when they began to occur in August 1974. In a letter to the Naval Supply Center dated October 14, 1975, Mr. Nahulu stated, in part, "On August 23, 1974, upon receipt of my paycheck for the pay period ending 17 August 1974, I noticed that I had an \$.86 per hour pay raise (from \$11.60 to \$12.46 per hour)." In the same letter, he also indicated that he immediately notified the personnel office of the unexplained increase in his salary and that, if he were not notified otherwise, he would consider the raise to be valid and would not be obligated for any errors.

The authority to waive erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584 (Supp. IV, 1974). Subsection (b) of 5 U.S.C. § 5584 prohibits exercise of waiver authority by the Comptroller General:

"(1) if, in his opinion, there exists, in connection with the claim, 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 statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1977), provides, in pertinent part, for waiver of an erroneous payment whenever:

"(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 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. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or

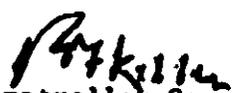
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allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. \* \* \*  
(Emphasis supplied.)

Although there is no indication of fraud or misrepresentation on Mr. Nahulu's part, we have consistently held that where the employee was aware of the overpayment when it occurred, a request for waiver will be denied. Acceptance of the overpayments with knowledge of their erroneous nature constitutes "lack of good faith" and waiver is prohibited by law. See Matter of Marvin L. Peek, B-188803, June 15, 1977. Moreover, we have held that an employee must do more than merely notify administrative officials of an overpayment when the employee is aware of the error, and that as a reasonable and prudent person who knows that he is being overpaid the employee should set aside the amount of the overpayment for eventual refunding when the error is finally corrected. See Matter of Charles Gulliford et al., B-167804, January 23, 1976.

Since Mr. Nahulu was aware of the unexplained overpayments when they occurred, he had a duty to make efforts to correct the error. Although he deserves credit for notifying the personnel office of the error, he did not set the overpayments aside for refunding when the error was corrected and he made no further efforts to have the mistake corrected.

We cannot find that Mr. Nahulu was free from fault or that he accepted the overpayments in good faith as required under the above-cited law and regulations. Therefore, his request for waiver is denied and the Claims Division action of April 19, 1977, is sustained.

  
Deputy Comptroller General  
of the United States

UNITED STATES GOVERNMENT

*P. Jannicelli*  
GENERAL ACCOUNTING OFFICE

*Memorandum*

TO : Director, Claims Division

August 18, 1977

Deputy  
FROM : Comptroller General *PKK*

SUBJECT: Request for Waiver of Overpayment of Pay - Thomas K.  
Nahulu - B-189657-O.M.

Returned herewith is File Z-2618420 forwarded for our consideration on July 19, 1977, along with our decision B-189657, dated today.

Attachments



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

*P. J. ...*  
*ef*

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August 18, 1977

The Honorable Spark Matsunaga  
United States Senate

Dear Senator Matsunaga:

Further reference is made to your letter of June 20, 1977, with enclosure, concerning the request of Mr. Thomas K. Nahulu for waiver of erroneous overpayments of pay, in the total amount of \$1,920.17, made to him during the period from August 5, 1974, through August 15, 1975.

We are enclosing a copy of our decision of today concerning this matter in which we deny Mr. Nahulu's request for waiver under 5 U.S.C. § 5584.

Sincerely yours,

*W. K. ...*  
Deputy Comptroller General  
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20540

*P. Annunelli*  
C.P.

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August 18, 1977

The Honorable Daniel K. Inouye  
United States Senate

Dear Senator Inouye:

Further reference is made to your letter of June 28, 1977, with enclosures, concerning the request of Mr. Thomas K. Nahulu for waiver of erroneous overpayments of pay, in the total amount of \$1,020.17, made to him during the period from August 5, 1974, through August 15, 1975.

We are enclosing a copy of our decision of today concerning this matter in which we deny Mr. Nahulu's request for waiver under 5 U.S.C. § 5584.

Sincerely yours,

*R. F. Kille*  
Deputy Comptroller General  
of the United States

Enclosure