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**DECISION**



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

04635

FILE: B-188802

DATE: December 30, 1977

MATTER OF: Fred T. Dick - Waiver of Overpayment

**DIGEST:** Drug Enforcement Administration employee requests waiver of overpayment of \$10,815.14. Due to administrative error employee continued to receive 25 percent post differential payments (Saigon rate) after his assignment to Bangkok, Thailand, where the rate was 10 percent. Erroneous payments were shown in employee's earnings statement. Claims Division action denying waiver is sustained. Although employee received within-grade increase shortly after transfer, he was partly at fault because he should have known of overpayments as he was aware that upon transfer post differential should have been reduced at least \$105 per pay period.

This action responds to an October 26, 1976, letter request from Peter B. Bensinger, Administrator, Drug Enforcement Administration (DEA), Department of Justice, for review and reconsideration of the action of our Claims Division that denied Mr. Fred T. Dick's application for waiver of overpayments of foreign post differential in the amount of \$10,815.14.

In early 1972, Mr. Dick was employed as a Supervisory Criminal Investigator, grade GS-15, with the Bureau of Narcotics and Dangerous Drugs (BNDD) (now DEA), Department of Justice, Saigon, Vietnam. In Saigon he was authorized a 25 percent foreign post differential. Effective June 14, 1972, Mr. Dick was transferred to Bangkok, Thailand, where he was only authorized a 10 percent post differential. Notwithstanding his reduced entitlement, through error Mr. Dick received payments of post differential at the 25 percent rate from pay period 14, 1972, through pay period 20, 1974, resulting in overpayments in the amount of \$10,815.14.

The records in this case disclose that a Form 50, Notification of Personnel Action, was prepared at BNDD headquarters in Washington, D. C., on June 21, 1972, confirming Mr. Dick's official reassignment effective as of June 14, 1972. This document was received by Mr. Dick, who was then the Regional Director of the BNDD Southeast Asian Regional Office, Bangkok, Thailand, on July 24, 1972. The Form 50 indicated that he was

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entitled to a 10 percent post differential. Mr. Dick admits that he noted this reduction in his post differential authorization, but was satisfied that he was being paid in the proper amount until an audit of his pay records revealed the overpayments in September 1974.

Mr. Dick contends that the heavy operational workload of his position during his overseas tour of duty prevented him from keeping track of his pay. However, this contention appears inconsistent with the record. For example, on February 9, 1972, Mr. Dick forwarded a memorandum requesting information as to the correctness of his compensation and outlining in minute detail every item of his pay for 14 pay periods. In this memorandum Mr. Dick exhibited a precise knowledge of his earnings and deductions for each pay period and indicated each pay period for which he had not received an earnings statement. On April 3, 1972, the BNDD forwarded a memorandum to Mr. Dick which specifically addressed each issue raised by him. Again on June 12, 1972, Mr. Dick telegraphed the BNDD headquarters in Washington, D.C., that he had not received his earnings statement for pay period 10 and requested that it be forwarded to him in Bangkok. In this same telegram, the employee also requested that his post differential be reduced from 25 percent to 10 percent.

Throughout the overpayment period, Mr. Dick admits that he received earnings statements. However, he contends that these statements did not provide for an entry that would show the numerical percentage of post differential actually being paid. On the other hand we note that Mr. Dick does not contend that the earnings statements did not contain an entry reflecting the amount of his post differential. Therefore, it appears that the amount of the post differential entry on the earnings statements did not show a reduction after the reassignment to Bangkok when it should have shown a substantial reduction.

Since Mr. Dick was aware that he would be entitled to a reduced post differential while stationed in Bangkok, he should have anticipated a significant reduction in his post differential from that which he received while in Saigon, which was 25 percent of the rate of his basic pay. A brief examination, particularly by one so knowledgeable of his pay as Mr. Dick, should have brought this discrepancy to his attention and caused him to inquire as to the correctness of his compensation as he had done so often in the past. In this connection

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Mr. Dick states that he received a within-grade increase on June 25, 1972, only 11 days after his reassignment, and this made it almost impossible to discover the error by item-by-item audit of his payments. However, the increase was only \$32.80 per pay period less deductions for civil service retirement contributions and taxes whereas the decrease in post differential was \$137.80. Therefore, it appears that Mr. Dick should have expected a net decrease per pay period of more than \$105.

The authority to waive overpayment of pay and certain allowances is contained in 5 U.S.C. § 5584 (Supp. IV, 1974) which provides in pertinent part that the Comptroller General may not waive any claim where 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.

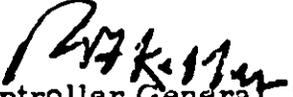
The implementing regulations for the statutory provision cited above are set forth in 4 C.F.R. Part 91, standards for waiver. Section 91.5(c) provides in pertinent part that claims of the United States arising out of erroneous payment of pay or allowances may be waived in whole or in part whenever:

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

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We have stated that while the above section refers to an unexplained increase in pay, it could also reasonably be applied to the continued receipt of salary where the employee has been given notice that his salary will be reduced at a specified date in the future and the employee's salary does not change after that date. Matter of Arthur Weiner, B-184480, May 20, 1976. Thus, we believe that a reasonable person, given the above facts, would have made an inquiry concerning the correctness of his pay.

Since Mr. Dick indicates that he was aware of the fact that after his reassignment to Bangkok he was entitled to a reduced post differential and that an examination of his earnings statements would have shown that he was continuing to receive payments at the 25 percent rate of basic pay which he received in Saigon, it cannot be said that Mr. Dick was free from fault in the matter. Therefore, the action of the Claims Division in denying the waiver is sustained.

  
Acting Comptroller General  
of the United States