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Charles Browne

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**DECISION**



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

**FILE: B-188893**

**DATE: April 10, 1978**

**MATTER OF: Roy E. Wood - Request for waiver  
of overpayment of compensation**

- DIGEST:**
1. Reemployed annuitant requests waiver of pay where agency failed to deduct portion of overpayment occurring prior to Civil Service Commission verification of annuity rate. Since agency was unable to collect overpayment at time agreed because of action of employee, such indebtedness may not be waived.
  2. Reemployed annuitant requests waiver of salary overpayment which resulted from employee's request for recomputation of annuity. Reemployed annuitant should have known retroactive adjustment in annuity would result in overpayment during his prior temporary appointment. Waiver denied.
  3. Reemployed annuitant requested waiver of overpayments made prior to verification of annuity rate from Civil Service Commission. When agency reduced salary after verification, reemployed annuitant should have known he was overpaid during prior pay periods. Waiver denied.

By letter dated March 14, 1977, Mr. Roy E. Wood requested reconsideration of the action of our Claims Division dated January 14, 1977, which denied Mr. Wood's request for waiver of salary overpayments. The overpayments occurred as a result of adjustments to Mr. Wood's annuity while he was employed as a reemployed annuitant with the National Aeronautics and Space Administration (NASA).

The record shows that NASA Collection Voucher No. 74-1125, dated March 7, 1974, in the amount of \$244.40 was sent to Mr. Wood for an overpayment of salary. The overpayment allegedly occurred between August 21 and

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December 20, 1972, while Mr. Wood was working under a temporary appointment as a reemployed annuitant. It resulted from a retroactive change in the employee's annuity which included the period of employment but occurred after the period of employment had terminated. By letter dated March 21, 1974, Mr. Wood requested that this amount be waived.

On September 25, 1974, Corrected Collection Voucher No. 74-1125 in the amount of \$255.60 was sent to Mr. Wood. In addition to the above \$244.40 an additional \$11.20 was included. The latter overpayment allegedly occurred between September 17 and October 12, 1973, during a 3-month temporary appointment which began September 17, 1973.

On April 7, 1975, the Corrected Collection Voucher of September 1974 was voided with the issuance of Collection Voucher No. 75-1064 of the same date. Voucher No. 75-1064, the final one issued, is in the amount of \$405.55. It is this amount that NASA states is currently owed by the employee. The voucher contains three alleged overpayments of the following amounts: \$11.20, \$112.80, and \$281.55. The \$281.55 item is an overpayment made during Mr. Wood's first temporary appointment in 1972.

We first consider the request for waiver of an overpayment in the amount of \$281.55 which allegedly occurred during a temporary appointment from August 21 to December 20, 1972. The record shows that on the effective date of Mr. Wood's employment under a temporary appointment as a reemployed annuitant, August 21, 1972, Mr. Wood's salary was reduced on the basis of an estimated annuity of \$602 per month. This amount was to be adjusted upon verification by the Civil Service Commission (CSC) of his annuity rate. On September 28, 1972, the CSC notified NASA that Mr. Wood's annuity would be at the rate of \$1,373 per month, retroactive to July 1, 1972. This resulted in a total salary overpayment of \$1,068 for the three pay periods prior to verification by CSC. The NASA Payroll Office reached an agreement with Mr. Wood to collect \$786.45 from him by payroll deductions and \$281.55 from his Federal tax withheld account before the end of the calendar year 1972. In 1975 NASA determined that the collection of \$281.55 from Mr. Wood's

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tax withheld amount, as authorized by Mr. Wood, apparently had not occurred. Hence, that amount appeared on Collection Voucher No. 75-1064, dated April 7, 1975.

Mr. Wood contends that the \$281.55 was collected. In conformance with Mr. Wood's letter of October 27, 1972, to the NASA Payroll Supervisor, the \$786.45 was to be collected by payroll deductions at the rate of \$547.20 per pay period. However, it was not possible to begin withholding the \$547.20 per pay period because Mr. Wood had previously been paid for work which he had not performed. This period of absence was brought to light upon receipt of time and attendance reports which were amended to record retroactive leave without pay taken by Mr. Wood. These overpayments had to be liquidated before the liquidation of the \$786.45 could begin. This, coupled with the fact that Mr. Wood took additional leave without pay prior to the termination of his appointment on December 20, 1972, further delayed liquidation of the \$786.45 to the point that it was near the end of the payroll year and collection from his Federal Income Tax withholding account could not be made. Of the \$1,068 gross overpayment, less the \$786.45 collected by payroll deduction, \$281.55 remains uncollected. This amount was paid by NASA to Internal Revenue Service on Mr. Wood's behalf and was included in his 1040 form for 1972.

Under the circumstances it appears that the agency was precluded from collecting the \$281.55 from the employee prior to his termination date because of the action of the employee. Thus, it cannot be said that collection of the debt which the employee knew he owed the Government would be against equity and good conscience, and it may not be waived. 5 U.S.C. § 5584 (1976).

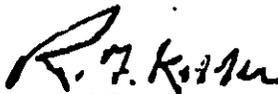
With regard to the \$112.80 item the record shows that on February 12, 1973, Mr. Wood executed an application, SF 2801, for recomputation of his annuity retroactive to July 1, 1972, under 5 U.S.C. § 8336(c), the law enforcement provision. The application for recomputation was approved and on April 14, 1973, Mr. Wood received a check for \$738 covering the period July 1, 1972, to March 30, 1973. This payment had the additional effect of causing Mr. Wood to have been overpaid during his temporary appointment with NASA from August 21 to December 20, 1972, in the amount of \$112.80.

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The record indicates that the employee is aware of the requirement that as a reemployed annuitant his salary must be reduced by the amount of the annuity. Therefore, in requesting a retroactive recomputation of his annuity on February 12, 1973, he had constructive if not actual knowledge that favorable action on his application would result in an overpayment during his prior temporary appointment. Accordingly, the item for \$112.81 is not for waiver.

The \$11.20 overpayment occurred when Mr. Wood was given a 3-month temporary appointment from September 17 to December 16, 1973. Prior to verification of his annuity rate by CSC, Mr. Wood was overpaid for two pay periods in a gross amount of \$11.20. As stated above, the employee is aware of the requirement that his salary be reduced by the amount of his annuity. Mr. Wood should have realized during the third pay period of his temporary appointment when his salary was reduced after verification of his annuity rate from CSC that he had been overpaid during the prior pay periods and that no recoupment for overpayments during those pay periods had been made. Accordingly, the item for \$11.20 is not for waiver.

Deputy

  
Comptroller General  
of the United States

UNITED STATES GOVERNMENT

*Memorandum*

*C Brown 40*  
GENERAL ACCOUNTING OFFICE

APR 10 1978

TO : Director, Claims Division

Deputy  
FROM : Comptroller General <sup>R.F. KELNER</sup>

SUBJECT: Request for waiver of overpayment of compensation  
B-188893-O.M.

Returned herewith is file Z-2512116 forwarded for our consideration on April 20, 1977, together with a copy of our decision B-188893, dated today, sustaining your division's denial of waiver.

Attachment