

DECISION



7642 C. Newell
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189083

DATE: September 13, 1978

MATTER OF: Ann J. Pelick - Request for Waiver of
Overpayment of Pay

DIGEST: Reemployed annuitant of Department of Health,
Education, and Welfare requests waiver of
overpayments totalling \$610.56 where agency
failed to deduct amount of annuity from
salary. Due to administrative error employee
continued to receive overpayments after she
had brought them to attention of agency.
Claims Division's denial of waiver is sustained
since employee accepted overpayments with know-
ledge of their erroneous nature.

The issue in this case is whether a claim of the Government against an employee for overpayments of pay may be waived under 5 U.S.C. § 5584 when the employee knew that she was being overpaid and made repeated attempts to have the agency correct its errors.

This decision is on a request for reconsideration of the action of our Claims Division on February 24, 1977, in denying waiver of an erroneous overpayment of pay to Ms. Ann J. Pelick.

The record shows that Ms. Pelick retired from the Department of Health, Education, and Welfare (HEW) on May 31, 1971. She was immediately rehired on June 1, 1971, in the same step and grade as a temporary employee (personnel assistant) at grade GS-7, step 8. With the exception of the period from June 10 to November 6, 1972, Ms. Pelick has been continuously employed as a personnel assistant since May 31, 1971.

Since July 1971, Ms. Pelick has experienced "payroll problems." Most of these problems involved the nondeduction or underdeduction of her civil service annuity, resulting in overpayments of salary. It is not disputed that the overpayments were exclusively caused by administrative error. On April 17, 1972, after notifying the Central Payroll Office at HEW of the overpayments, Ms. Pelick repaid \$370.14. Although, she again requested correction of the problem, the overpayments continued and on January 8, 1973, Ms. Pelick repaid an additional \$145.30.

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In addition to the amounts repaid to the agency, Ms. Pelick was overpaid a total of \$296.96 in 1973 and \$313.60 in 1974, for a total overpayment of \$610.56. Waiver of this debt was denied by our Claims Division on February 24, 1977, because "Mrs. Pelick's failure to note the errors and bring them to the attention of the appropriate officials constitutes partial fault on her part." Evidence of fault on the part of the claimant would, of course, be grounds for denial of the request for waiver.

The available evidence indicates that on two occasions in 1973 Ms. Pelick formally notified the Central Payroll Office in writing of payroll errors for the pay periods ending February 3, February 17, March 3, October 27, November 10, and November 24, 1973. In addition, Ms. Pelick formally notified the Central Payroll Office in writing of payroll errors for the pay periods ending August 3, August 17, and August 31, 1974. While it is not clear from the record how frequently Ms. Pelick orally communicated the existence of the overpayment problem, Mr. Thomas King, Director of the Parklawn Personnel Division, states that "Mrs. Pelick * * * made every effort to correct these overpayments during this period without success."

The authority to relieve employees of liability for receiving erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584 (1976). 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

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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. * * *

The record shows that the employee was aware of the requirement that as a reemployed annuitant her salary must be reduced by the amount of the annuity. The record also shows that Ms. Pelick was aware of the overpayments when they began to occur in 1971, 1972, 1973, and 1974 and brought them to the attention of the payroll office of HEV.

We have consistently held that where an employee was aware of the overpayment when it occurred, a request for waiver will be denied. Since, as stated above, Ms. Pelick was aware of the overpayments when she received them collection action against her would not be against equity and good conscience.

Therefore, her request for waiver is denied and the Claims Division action of February 24, 1977, is sustained.

Shelton J. Acosta

Acting Comptroller General
of the United States



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

C. Daniels
PL 117

B-189083

September 13, 1978

The Honorable Joseph M. McDade
Member, United States House
of Representatives
1223 Bank Towers
Scranton, Pennsylvania 18503

Dear Mr. McDade:

Further reference is made to your letter of April 25, 1977, concerning the request of Ms. Ann J. Pelick for waiver of erroneous overpayments of pay in the amount of \$610.56. The debt arose as a result of nondeduction or underdeduction of her civil service retirement annuity from her salary as a reemployed annuitant with the Department of Health, Education, and Welfare.

By our decision of today B-189083, copy enclosed, we have determined that, since Ms. Pelick was aware of the overpayments when she received them, collection action would not be against equity and good conscience under 5 U.S.C. § 5584. Therefore, her request for waiver of liability has been denied. We regret that we were unable to give a more favorable reply to Ms. Pelick.

Sincerely yours,

Wilton J. Jones

Acting Comptroller General
of the United States

Enclosure