

DECISION



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

I Richman  
Part I  
8653  
GAO 4411

FILE: B-191772

DATE: December 19, 1978

MATTER OF: Edward A. Mike - Waiver of overpayment

*[Indebtedness Waiver Denied When Employee Should Have Realized That Substantial increases in His Pay Were Not Proper]*

DIGEST: Employee received excess salary payments for two separate periods through agency administrative error in computing his salary at GS-9 grade, rather than at GS-5 grade, but made no inquiry regarding sudden unexplained substantial increase in pay. Request for waiver of indebtedness is denied in view of the fact that the employee should have recognized that the substantial increases in his pay were not proper and verified the correctness of salary payments.

This action concerns the appeal of Mr. Edward A. Mike against the denial by our Claims Division of his application for waiver of the claim of the United States against him resulting from overpayments of his compensation in the amount of \$3,824.90. The overpayments were made to Mr. Mike during the periods November 24 through December 7, 1974, and from January 5 through September 13, 1975, incident to his employment with the Bureau of Indian Affairs, U.S. Department of the Interior.

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Mr. Mike had applied for waiver of the claim under the provisions of 5 U.S.C. 5584, and such waiver request was denied by our Claims Division on January 10, 1978.

Mr. Mike was hired as a Teacher, grade GS-5, step 1 (\$8,005 per annum) on September 3, 1974, by the Bureau of Indian Affairs, with his duty station at Stewart, Nevada. Thereafter, through administrative error, Mr. Mike's payroll record was erroneously changed to reflect a rate of pay four grades higher than he was entitled to receive, and was computed at the GS-9, step 1 rate (\$12,167 per annum) for the period November 24 through December 7, 1974. This initial error was detected by payroll, however, a further administrative error occurred when the payroll computer processed the employee's salary rate at the GS-9, step 1 rate during the period from January 5 through September 13, 1975.

As a result of the foregoing administrative errors, the employee was overpaid \$3,824.90. He was notified of the

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erroneous payments by an agency adjustment notice dated October 7, 1975, and was informed that \$50 per pay period would be deducted from his salary until the full indebtedness was repaid.

The employee asserted his request for waiver on the basis that he didn't know how to read and interpret the leave and earnings statement furnished him and he only "looked at his take home pay." But in this regard, the agency report in this matter shows periods involved when the employee's take home pay was nearly double what it had been at the correct rate. In fact, he was overpaid an average of a little over \$200 for each of 19 pay periods involved.

Our Claims Division action of January 10, 1978, denied the application for waiver, since Mr. Mike had been furnished earnings statements enabling him to verify the accuracy of his pay in relation to the significant increases in pay received, and placed him in the position of being at least partially at fault in the matter.

Subsection 5584(a) of title 5, United States Code (1976), provides in pertinent part that a claim of the United States against a person arising out of an erroneous payment of pay or allowances to an employee, the collection of which "would be against equity and good conscience and not in the best interests of the United States," may be waived in whole or in part. Subsection 5584(b) further provides that the Comptroller General or the head of the agency, as the case may be, may not exercise his authority to waive any claim--

"(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 (1978), 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 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 existing in the particular case. \* \* \*" (Emphasis supplied.)

With respect to the foregoing, if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. Matter of Roosevelt W. Royals, B-188822, June 1, 1977.

An employee has the responsibility to verify the correctness of the payments he receives, and where a reasonable person would have made an inquiry but the employee did not, then he is not free from fault, and the claim may not be waived. Matter of John J. Doyle, B-191295, July 7, 1978.

In accordance with the foregoing it is concluded that Mr. Mike was at least partly at fault in failing to notice or to question the sudden unexplained increase in his pay during the pay periods during which the administrative errors occurred. Requiring him to make repayment in this case is not against equity or good conscience, nor contrary to the best interests of the United States.

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Accordingly, the denial of the request for waiver by our Claims Division letter of January 10, 1978, is sustained.

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