

DECISION

11217 *PLM-I*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194740

DATE: August 24, 1979

MATTER OF: Robert J. Otto - *Request For* Waiver of Overpayment *J*

DIGEST: Receipt of overtime compensation is limited by 5 U.S.C. § 5547 based on the maximum rate for GS-15 in effect during pay period(s) when overtime was worked and earned. A GS-15, step 8, employee paid at that maximum rate was erroneously credited with compensatory leave and was overpaid \$171.20 for unused compensatory time. He may not be granted waiver, since he had reason to know that any additional pay would cause his pay to exceed that statutory maximum.

This decision responds to the appeal of Mr. Robert J. Otto, an employee of the Army, from the partial disallowance of his request for waiver of an overpayment pursuant to 5 U.S.C. § 5584. By letter of December 21, 1978, our Claims Division waived \$415.20 of the \$568.40 overpayment. The amount waived represents the value of compensatory leave taken by Mr. Otto that caused his aggregate rate of pay for the pay periods in which it was earned to exceed the maximum rate for GS-15 in violation of the limitation on receipt of premium pay imposed by 5 U.S.C. § 5547. The Claims Division disallowed waiver of the remaining \$171.20, which Mr. Otto received in the pay period ending July 17, 1976, as payment for 16 hours of unused compensatory leave with which he was improperly credited for overtime work in excess of that same limitation on receipt of premium pay.

In declining to waive the \$171.20 overpayment, our Claims Division found that collection of the erroneous overpayment would not be against equity and good conscience and would be in the best interest of the Government since Mr. Otto, a GS-15, step 8, employee whose rate of basic pay was set at the statutory limit, had reason to know that any additional payment would result in his receipt of pay in excess of the maximum rate. Mr. Otto takes exception to that determination. He states that in July 1976 Congress was in the process of raising the maximum GS-15 rate, and therefore he asserts he had no reason to believe that when he received the \$171.20 overtime compensation in July 1976 he would exceed the GS-15 limitation. Consequently, he asserts that waiver of this portion of the overpayment would not be against equity and good conscience, the standard for waiver under 5 U.S.C. § 5584.

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Under 5 U.S.C. § 5547 an employee may receive certain premium pay, including overtime pay as provided in 5 U.S.C. § 5542, "only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15." The maximum GS-15 rate to be considered in applying 5 U.S.C. § 5547 is that in effect for the pay period(s) when the overtime is earned and not the rate in effect when compensatory leave is taken or when the payment for unused compensatory leave is made. In 1975 when Mr. Otto performed the overtime work for which he was credited with compensatory time off, his pay was set at GS-15, step 8, the maximum rate payable. In July 1976 when he was paid the \$171.20, he held the same grade and step and was likewise paid at the statutory maximum. Since any payment of premium pay at either time would have caused his pay to exceed the statutory maximum we fail to understand how Mr. Otto could have been under the impression at the time he received the overpayment that congressional consideration of a pay raise that was not to be effective until October 1, 1976, nearly 2 1/2 months later, would somehow permit the additional payments.

Consequently, the disallowance of our Claims Division is sustained.


Deputy Comptroller General
of the United States