

DECISION

DLMI *14755*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198562

DATE: August 28, 1980

MATTER OF: Peter D. Bourgois - *[Request For]* Waiver of Erroneous Overpayments of Salary

- DIGEST: 1. New employee was hired at GS-5, step 1, but was incorrectly listed at GS-5, step 10, on his original employment papers. The employee was paid \$7.66 per hour, although his original papers showed pay rate was \$6.22 per hour. Four months later he noticed the mistake and went to the Personnel Office. He was not free from fault since correct pay was on original employment papers and a reasonable person would have checked figures and made inquiry earlier. Employee is not entitled to waiver of prior overpayments.
2. New employee was hired at GS-5, step 1, but was incorrectly listed at GS-5, step 10, on his original employment papers. The employee was paid \$7.66 per hour, although his original papers showed pay rate was \$6.22 per hour. Four months later he noticed the mistake and went to the Personnel Office. A personnel clerk examined employee's papers and determined he was entitled to amount he was receiving. The extra amount he received thereafter is waived since a new employee could reasonably rely on a personnel clerk's statement that he was receiving the correct pay.

Mr. Peter D. Bourgois requests reconsideration of the determination of our Claims Division denying his request for waiver under 5 U.S.C. § 5584 (1976), of erroneous payments of compensation. (Claim No. Z-2812359).

Mr. Bourgois was hired into the Government as a career-conditional appointee to a GS-5 Landscape Architect position in the Department of Agriculture on December 4, 1977, at a special salary rate under 5 U.S.C. § 5303. Since he

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was not a full-time employee, his salary was shown at an hourly rate rather than an annual rate on the initial appointment papers, Form AD-350. However, on Form AD-350 his grade and step were incorrectly shown as GS-5, step 10, instead of GS-5, step 1, but his pay was correctly shown as \$6.22 per hour. Based on the incorrect data on his Form AD-350, he received \$7.66 per hour instead of \$6.22 per hour. Mr. Bourgois had also been orally informed that his pay would be approximately \$13,000 per year. Mr. Bourgois' Earnings Statement (Form AD-334) stated that his pay was \$7.66 per hour. According to Mr. Bourgois he received his first AD-334 approximately 3 to 4 weeks after he started working. However, it was not until another few weeks before he calculated his yearly salary and found out that he was getting paid at a rate of about \$16,000 a year. Subsequently, Mr. Bourgois looked through his employment file and found Form AD-350 which stated that he was to be paid at \$6.22 per hour. On or about March 1, 1978, Mr. Bourgois discussed his pay discrepancy with a payroll clerk in the personnel office who informed him that he was receiving the correct pay. Mr. Bourgois then discussed the problem with his supervisor. On March 30, 1978, Jack Griswold, Branch Chief, talked to the personnel officer about the possibility of salary overpayment to Mr. Bourgois. At that time, personnel finally noticed the error.

The authority to waive overpayments of pay and allowance is contained in 5 U.S.C. § 5584 (1976). The Comptroller General may not exercise his waiver authority if there is an indication of fraud, misrepresentation, fault, or lack of good faith by the employee.

The issue in this case is whether Mr. Bourgois was at fault in accepting the overpayment. In regard to that requirement, we stated in B-165663, June 11, 1969:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that

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a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

We believe that a reasonable employee would have questioned the overpayment in these circumstances. The deciding factor in this case is that Mr. Bourgois had employment papers in his possession which showed that his correct pay rate was \$6.22 per hour, not \$7.66. Also, the fact that \$7.66 per hour resulted in a salary of about \$16,000 per year should have put the employee on notice that an overpayment was being made. See Arthur Weiner, B-184480, May 20, 1976; B-180559, March 11, 1974.

After 4 months Mr. Bourgois did notice the error and went to the personnel office. A payroll clerk examined all his records, noticed the discrepancy, but erroneously determined that he was entitled to \$7.66 per hour because that was the accelerated rate of pay of a GS-5, step 10, under the special salary rate pursuant to 5 U.S.C. § 5303. Mr. Bourgois had just been hired by the Government and he had no knowledge of personnel laws. Therefore, since Mr. Bourgois did inquire about his pay rate at that time and was informed that it was correct, we do not believe that fault should be imputed to him after he was advised by an employee in personnel that his pay was correct. See James H. Schroeder, B-186262, June 28, 1976; Thomas J. Strenger, B-182311, November 7, 1974.

Accordingly, the overpayments for pay periods 5 and 6 totalling \$230.40 are hereby waived under the authority of 5 U.S.C. § 5584. The prior overpayments are not waived because the employee may not be considered free from fault with respect to the payments he received before he made inquiry at the personnel office.

Harry R. Van Cleave
For the Comptroller General
of the United States