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G.C.M.



DECISION

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

FILE: B-200460

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DATE November 18, 1980

MATTER OF: Josie W. Thomas - [Claim for Post-Judgment Interest]

DIGEST: Where agency provides erroneous computation of post-judgment interest to our Claims Group, it is not bound to issue settlement certificate on the basis of such erroneous data but must correctly recompute the interest and issue the settlement certificate on the basis of the correct recomputation.

This action concerns an appeal by Josie W. Thomas from settlement certificate No. Z-2818751, August 28, 1980, issued in the amount of \$1,003.21 by our Claims Group on her claim for post-judgment interest on a backpay award by the United States District Court for the District of Columbia in Josie W. Thomas v. Edmund Muskie, Civil Action No. 77-0322. The Department of State erroneously computed such interest in the amount of \$3,081.02 and the claimant contends this is the amount she should receive. We do not agree inasmuch as the Department of State's calculations are demonstrably in error.

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The District court issued its judgment in this case on March 30, 1979, ordering among other things reinstatement of Ms. Thomas in the position of FSS-7, Secretary, backpay from January 1, 1977 and interest on the award. The Government appealed the award of pre-judgment and post-judgment interest in the United States Court of Appeals for the District of Columbia Circuit. Contrary to our policy of certifying only final judgments, our Claims Group through administrative oversight issued a settlement certificate on November 23, 1979 in the amount of \$25,028.53 on the backpay award, exclusive of interest, computed as follows:

Gross Payment	\$40,703.44
less: 1977 outside wages	-2,268.36
1978 outside wages	-3,162.98
Adjusted Gross	35,272.10
less: Fed. Ret. Ded.	-2,849.24
Fed. Inc. Tax Ded.	-5,779.24
D.C. Inc. Tax Ded.	-1,615.09
Net Payment	25,028.53

The claimant agreed in writing to these computations and a check was issued in the net amount on November 30, 1979.

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On April 7, 1980, the Court of Appeals reversed the part of the award requiring pre-judgment interest but affirmed the award of post-judgment interest. Accordingly, the Department of State computed the post-judgment interest due at the rate of 6 percent on the adjusted gross of \$35,272.10 from March 30, 1979, the date of the judgment, until June 30, 1980, the scheduled date for payment of the interest. That computation resulted in an amount of \$3,081.02.

When our Claims Group reviewed these computations in advance of issuing a settlement certificate, the following errors were discovered. The principal amount of the judgment was paid on November 30, 1979, and hence the obligation to pay interest should have terminated at that time instead of 7 months thereafter. Also, interest should not have been computed on the adjusted gross amount of the award but on the net award instead. The amounts calculated for federal and District of Columbia income tax and Federal retirement withholding deductions should have been paid over to the appropriate governmental agencies at the end of each pay period during the backpay time frame. Hence, the claimant was not deprived of the use of these funds over that period. If interest on these deductions were to be paid, the governmental agencies should be the recipients inasmuch as they were the ones which were deprived of the funds for the period in question and not the claimant.

In this connection, backpay computation in this case is governed by 29 CFR 1613.271 and 5 CFR 550.804. Under the provisions of 5 CFR 550.804(a) agencies are instructed to compute backpay for the period " * * * as if the unjustified or unwarranted personnel action had not occurred, but in no case will the employee be granted more pay, allowances and differential than he or she would have been entitled to * * * ." Unearned, excessive interest would serve to increase the claimant's recovery beyond the amount to which she is entitled and thus be inconsistent with the above quoted regulation. Moreover, the Department of State has forwarded this Office a corrected copy of its computations which now substantially agrees with our interest computation of \$1,003.21.

This is not an instance in which the Court itself specified, as part of its award, a fixed dollar amount of interest. The Court of Appeals merely affirmed the lower court's award of post-judgment interest (although it overturned the award of pre-judgment interest) from the time of the judgment (April 7, 1980) until all amounts due her were paid. It is assumed that the calculations of the amounts to be paid will be made accurately and in accordance with the law and applicable regulations and the express terms of the judgment.

On the basis of the foregoing we have concluded that the August 28, 1980 settlement certificate in the amount of \$1,003.21 issued in this matter is correct and the action of the Claims Group is sustained.

Harry D. Chen

For the Comptroller General
of the United States