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DECISION



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

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[Request for Waiver of Indebtedness]

FILE: B-201815

DATE: March 25, 1981

MATTER OF: Beatrice M. Lansdown

DIGEST: Employee on promotion from grade GS-8, step 6, to GS-9, was erroneously given pay rate of step 7, rather than correct rate of step 5. Employee immediately notified personnel office of error, but overpayments continued for 6 months before corrected. Since the employee received the overpayments knowing an error had been made waiver is not appropriate. Employee's assertion that money was not set aside for refund because the exact amount of the overpayment was unknown due to overtime pay, does not provide valid reason for waiver, since basic rates of pay and their step increments could easily be determined. As a result, requiring repayment is not against equity and good conscience. 5 U.S.C. 5584.

This action is in response to a letter dated November 5, 1980, from Ms. Beatrice M. Lansdown, a civilian employee of the Department of Agriculture, requesting reconsideration of the action of our Claims Group, dated August 15, 1980, which denied waiver of her indebtedness to the United States in the amount of \$714.14, which arose from erroneous payments of compensation during the period March 12 through October 20, 1979. We agree with the action of the Claims Group.

The file shows that Ms. Lansdown was employed as a Supervisory Market News Assistant, grade GS-8, step 6. Effective March 12, 1979, she was promoted to grade GS-9. The personnel action in her case shows that she was given the pay rate of step 7, whereas her pay rate should have been as a step 5. Immediately after Ms. Lansdown received her Form AD-350, notice of promotion, she notified appropriate officials of the error. In spite of the fact that she received assurances that her pay rate was correct, she again questioned them in October 1979, at which time the error was acknowledged by the personnel office. It was concluded by our Claims Group that she knew or should have

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known that she was receiving erroneous payments and should have set that payment aside for eventual refund. Her failure to do so made her partially at fault in the matter thereby precluding waiver.

Ms. Lansdown disagrees with that conclusion. She contends that because of overtime pay her paychecks varied considerably and as a result she did not know what the actual amount of the erroneous payment was for retention and refund purposes. Further, she notes that there were many more undocumented instances when she questioned her salary. She contends that since she took these actions and was repeatedly advised her pay was correct that she discharged all her responsibilities.

The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. 5584, permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other persons having an interest in obtaining the waiver.

It has been consistently held that when an employee is aware of an overpayment of pay when it occurs, he is not entitled to relief under 5 U.S.C. 5584. If he accepts such an overpayment, knowing it to be erroneous, he cannot reasonably expect to retain it and he should make provision for its repayment. In such case, collection of this overpayment is not considered to be against equity, good conscience, or in the best interests of the United States, notwithstanding the fact that he may have brought the situation promptly to the attention of the proper authorities and sought an explanation or correction of the error. See Matter of Thomas K. Nahulu, B-189657, August 18, 1977; Matter of Ann J. Pelick, B-189083, September 13, 1978; and Matter of James T. Harrod, B-195889, February 14, 1980.

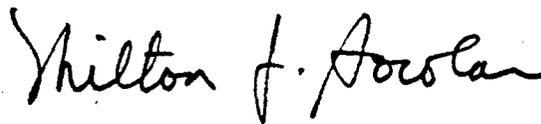
In this case, Ms. Lansdown states that she knew the payments were erroneous from the date she was notified of the promotion. The assertion that she did not know the exact amount of the overpayment because of overtime pay and therefore did not know the amount she should put aside does not

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provide a reason for granting waiver since the basic rates of pay for each GS grade and their step increments can be determined with relative ease. As a result, she could have ascertained the approximate amount of the overpayment on a biweekly basis and set funds aside to take care of the matter.

Therefore, it is our view that to require Ms. Lansdown to repay the debt would not be against equity and good conscience nor contrary to the best interest of the United States.

Accordingly, the action by our Claims Group denying waiver is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States