

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-208040**DATE:** January 31, 1983**MATTER OF:** Alfred Rosenberg**DIGEST:**

A reemployed annuitant stationed overseas requests waiver of payment of \$8,754.66 in cost-of-living and living quarters allowances which were erroneously paid after a break in his service. Although the employee received at least one erroneous allowance payment during his break in service in conjunction with accrued annual leave, waiver is granted. Nothing in record indicates that employee knew his entitlement to allowances had ended or that the employee was at fault with regard to the erroneous payment prior to his reemployment.

This is in response to the appeal of Mr. Alfred Rosenberg from the action of our Claims Group, AFMD, in Z-2829870-121, September 1, 1981, which denied his application for waiver of overpayment of a living quarters allowance and a cost-of-living allowance between March 1978 and November 1979 in the amount of \$8,754.66.

The record shows that Mr. Rosenberg, an employee of the Department of the Army in Oberursel, West Germany, was mandatorily retired effective February 28, 1977. He was rehired the next day, March 1, 1977, as a reemployed annuitant on a temporary appointment for six months. On September 1, 1977, Mr. Rosenberg was again rehired as a temporary employee for six months. On March 1, 1978, Mr. Rosenberg's continuous employment terminated. He was rehired on June 14, 1978, on a temporary appointment not to exceed six months, and since that time he has been rehired at six-month intervals.

Because of his break in service (March 1 to June 14, 1978), Mr. Rosenberg was not entitled to foreign allowances at the time of his reappointment in June 1978. Nevertheless, due to administrative error, he continued to receive cost-of-living and living quarters allowances from June 14, 1978, until November 1979. The Army indicates that from March 1 to June 14, he was paid cost-of-living and living quarters allowances for three of the first four pay periods during his break in service.

C.24498

In November 1979 when Mr. Rosenberg's allowances were terminated, he inquired as to the reason and first learned of the overpayment. He began repaying the debt through payroll deduction and requested waiver. A subsequent investigation indicated that a Standard Form 1190 terminating Mr. Rosenberg's living quarters allowance was sent to the U.S. Army Finance and Accounting Center, Europe, on March 1, 1978. Although received, the SF 1190 was not posted and entered on the computer. An SF 1190 terminating his cost-of-living allowance was not initiated until November 1979. The Army has indicated that Mr. Rosenberg was not paid allowances between March 1 and June 14, 1978 (except as noted earlier), because the pay actions were manually "zeroed out" by the Finance Office. When Mr. Rosenberg was rehired on June 14, 1978, he was not informed that he was ineligible for the allowances. SF 50's dated June 1978, December 1978, and June 1979 rehiring Mr. Rosenberg do not list cost-of-living or living quarters allowances among the benefits for which he is ineligible. A copy of the SF 1190 which terminated his living quarters allowance in March 1978 apparently was not sent to Mr. Rosenberg.

In processing Mr. Rosenberg's application for waiver the Army found no evidence of fraud, misrepresentation, fault or lack of good faith on the part of the employee and recommended waiver of all payments after June 14, 1978. The report noted the employee's excellent record and pointed out that it was unreasonable to expect an employee to assume his benefits would be reduced under these circumstances.

The authority to waive overpayments of certain pay and allowances is contained in 5 U.S.C. 5584 which provides, in pertinent part, that the Comptroller General may not waive any claim where 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. In its action of September 1, 1981, Z-2829870-121, the Claims Group acknowledged that Mr. Rosenberg would not have realized he had no entitlement to the foreign allowances when he was rehired on June 14, 1978. However, it found fault on his part for not promptly

inquiring regarding three payments between March 1 and June 14, 1978, and reasoned that, if he had so inquired, the computer error would have been discovered and subsequent overpayments would have been prevented.

In his appeal Mr. Rosenberg has submitted copies of the leave and earnings statements sent to him for the three periods in question when he was not employed. The first, for the pay period ending March 18, 1978, shows an allowance of \$65.87. However, the blocks marked nontaxable earnings and net pay are blank, and the block reflecting total nontaxable earnings for 1978 through March 18, 1978, shows no increase over the amount shown on the leave and earnings statement for his last official pay period ending March 4, 1978. Apparently, this amount was never paid. The following pay period he did receive a payment of \$191.13 for both allowances. Because he also received a lump-sum payment for accrued leave in the amount of \$5,602.56, he states that he assumed the \$191.13 amount was a payment for past due allowances. With regard to the third leave and earnings statement for the pay period April 29, 1978, the earnings statement indicates that he was not only paid allowances of \$306.42 but also received base pay of \$601.20, or a total of \$907.62. The leave and earnings statement is inconsistent on its face. It reflects a net pay amount of \$643.05, although deductions total only \$127.74, and the block reflecting total nontaxable earnings for 1978 shows an increase of \$115.29 rather than \$306.42 over the total for the prior pay period. It is significant to note that Mr. Rosenberg was not entitled to basic pay or allowances and that the Army has failed to report an overpayment of basic pay for this pay period. This fact together with the Army's indication that his payroll actions were being manually withheld outside the computerized payroll at this time tends to confirm Mr. Rosenberg's statement that the sum of \$643.05 was never received.

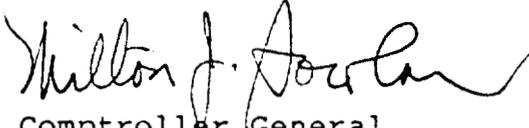
Upon further consideration we do not find that Mr. Rosenberg was at fault or lacked good faith in this matter. While it is clear that he did receive an overpayment on April 1, 1978, under the circumstances his acceptance of that payment in connection with a

B-208040

payment for accrued leave was not unreasonable. The fact that he was issued two erroneous earnings statements in addition did not necessarily require action on his part since it appears he was not in fact paid for those pay periods. Accordingly, since there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Mr. Rosenberg for the period between March 1 and June 14, 1978, collection of the overpayments of allowances in that period is hereby waived under the provisions of 5 U.S.C. 5584 (1976).

With regard to the overpayments which began upon his reemployment, we agree with the Claims Group and the Army that it was reasonable under the circumstances for Mr. Rosenberg to assume he was entitled to cost-of-living and living quarters allowances.

Accordingly, since, there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Mr. Rosenberg with regard to the overpayments after June 14, 1978, collection thereof is hereby waived under the provisions of 5 U.S.C. 5584. Repayments made by Mr. Rosenberg on account of this debt may be returned to him.

for 
Comptroller General
of the United States