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**DECISION**



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

**FILE:** B-211345

**DATE:** July 21, 1983

**MATTER OF:** James S. Vinson, Jr., - Waiver - Improper Step Placement

**DIGEST:**

Employee was erroneously overpaid salary due to the agency's mistake in setting step within his grade upon his transfer from a wage grade position to a General Schedule position in a different location. Waiver is granted since the record does not establish knowledge on the employee's part as to the step in which he should have been placed, which would be sufficient to support a finding of fraud, fault, misrepresentation or lack of good faith on his part. Furthermore, since the employee was not in a position to know and understand pay regulations, he was not at fault for failing to recognize that he had been improperly converted from the wage grade pay scale to the General Schedule, particularly when there was no discrepancy between the step and pay rates listed on the SF-50 effecting his transfer and the pay he was actually receiving.

Mr. James S. Vinson, Jr., a civilian employee of the Department of the Army, appeals our Claims Group's denial (Z-2824079-121, February 9, 1981), of his request for waiver of a claim against him by the United States for the recovery of \$1,933.20 in erroneous salary overpayments.

The question presented is whether Mr. Vinson knew, or should have known, that he had been placed in the wrong step of grade GS-9, and was, therefore, receiving more pay than he was entitled to receive, when he was transferred to a new position at the Sacramento Army Depot in Sacramento, California. For the reasons stated below, we hold that Mr. Vinson's failure to question his new step placement, and the resulting increase in his salary, does not preclude waiver of the Government's claim against him on grounds of fault. Therefore, waiver is hereby granted.

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Mr. Vinson was employed as a grade GS-9, step 3, Electronics Technician at the Lexington-Blue Grass Army Depot in Lexington, Kentucky. His salary in that position was set at \$7.23 per hour or \$15,037 per annum. As the result of a position survey issued in May 1977, Mr. Vinson's position was changed to a wage grade, WG-12, step 3, Electronics Mechanic, effective July 24, 1977. In accordance with this change, his rate of pay was adjusted to \$7.73 per hour or \$16,078 per annum.

Thereafter, under the Army's Merit Promotion Plan, Mr. Vinson applied for and accepted a position as an Electronics Technician, grade GS-9, at the Sacramento Army Depot in Sacramento, California. At the time he left Lexington, his grade was the same, and his salary was \$7.85 per hour or \$16,328 per annum. He began work in this position on October 22, 1978. At the time he entered on duty in Sacramento, Mr. Vinson was erroneously placed at the step 10 level of grade GS-9. This erroneous placement was reflected in the initial Standard Form (SF) 50 documenting his employment. Mr. Vinson's rate of pay at this step was \$9.95 per hour or \$20,699 per annum. But for this administrative error, his salary would have been set at the step 3 level of grade GS-9, at the rate of \$8.16 per hour or \$16,982 per annum.

The Army's Civilian Personnel Office in Sacramento made the administrative error which caused Mr. Vinson to be improperly placed at step 10 of grade GS-9. In establishing Mr. Vinson's pay, that office attempted to follow the "highest previous rate" rule stated in the Federal Personnel Manual (FPM) Supplement 990-2, Book 531, at S2-4b(4). That section provides that an employee whose highest previous rate of pay was earned in a position not subject to the General Schedule, who transfers from a position outside the General Schedule (GS) to a GS position, is entitled to be paid at the next highest GS rate up from his prior (non-GS) rate, when his prior rate falls between two established rates of the General Schedule.

Implementing that provision, the personnel office attempted to establish a proper GS rate for Mr. Vinson, based on his previous WG-12, step 3, status in Lexington. A complication arose, however, when the personnel officials realized that the pay rates set in the WG scale for the Sacramento area were substantially higher than the rates established for the same wage grades and steps in the Lexington vicinity. Recognizing this discrepancy, the

Civilian Personnel Office decided to interpret the FPM provisions, cited above, so as to use the WG rate established in the Sacramento vicinity as the rate for converting Mr. Vinson's pay to the GS scale.

In light of this interpretation, the personnel office placed Mr. Vinson in step 10 of grade GS-9, at a salary of \$9.95 per hour, since this was the next GS step and pay rate up from the \$9.72 per hour salary paid to a WG-12, step 3, employee at the Sacramento Army Depot. In setting Mr. Vinson's step and rate of pay at this level, the Civilian Personnel Office in essence ignored that fact that the salary paid to Mr. Vinson as a WG-12, step 3, employee in Lexington was only \$7.85 per hour, substantially less than the rate of pay set for that grade and step in the Sacramento vicinity.

As a result of this administrative error, the Army paid Mr. Vinson at the hourly rate of \$9.95, rather the correct rate of \$8.16 per hour, for a period of 1,080 hours, from October 22, 1978, through April 28, 1979. The agency finally discovered that an error had been made in setting Mr. Vinson's pay on May 11, 1979. At that time, the personnel office issued a corrected SF-50 which reduced Mr. Vinson's pay to the level of grade GS-9, step 3.

The gross amount of the overpayment was \$1,933.20. On November 6, 1979, shortly after the Civilian Personnel Office informed him of the error, Mr. Vinson requested waiver of the Government's claim against him. In his application for waiver, Mr. Vinson stated that he was completely unaware that he had been overpaid until he was so informed in November 1979. He further stated that he had no reason to suspect that an error had been made since he was not familiar with Government regulations and procedures relating to an employee's conversion from a non-GS pay scale to the General Schedule.

In forwarding the matter to our Office, the Army corroborated Mr. Vinson's statements regarding his lack of expertise in pay and personnel matters, and recommended that waiver be granted since there was no indication of fraud, fault, misrepresentation or lack of good faith on the employee's part.

Our Claims Group disagreed, and denied waiver in its February 9, 1981, determination, in the belief that:

"Since Mr. Vinson had previously held a position at the grade of GS-9, step 3, \* \* \* as a reasonable person he should have questioned his entitlement to a salary at the step 10 level when he returned to the grade of GS-9. Furthermore, \* \* \* an employee of his rank and experience should have questioned his entitlement to the approximately \$4,000 per year salary increase he received when he transferred to the new position. \* \* \*"

Mr. Vinson now appeals our Claims Group's denial of his request for waiver. In a letter forwarded to our Office by the Army, Mr. Vinson affirms that he has never worked in a Government payroll or personnel office and is therefore unfamiliar with the Federal Personnel Management regulations which govern the establishment of pay rates and step levels for employees transferring from one pay system to another. He further indicates that he did not know or suspect that he was being overpaid until the Civilian Personnel Office first informed him of the error, and that until that time, he had no reason to doubt the personnel officer's interpretation of the FPM regulations, since that officer was far more familiar with the applicable regulations than he was. In light of his unfamiliarity with the above regulations, Mr. Vinson maintains that any action taken by the Government to collect the amount erroneously overpaid would be unjust, and would impose a severe hardship on him.

The Comptroller General is authorized by 5 U.S.C. § 5584 (1976), to waive claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses, if collection would be, "against equity and good conscience and not in the best interests of the United States." Such authority may not be exercised if there is, "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." Implementing the statute, 4 C.F.R. § 91.5(c) (1983), states that:

" \* \* \* Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily, would preclude a waiver when the employee or member fails to bring the matter

to the attention of appropriate officials.  
Waiver of overpayments of pay and allowances  
under this standard necessarily must depend  
upon the facts existing in the particular  
case. \* \* \*

We have held that this language applies not only to unexplained increases in pay, but also to an employee's receipt of an initial salary in a new position at a rate in excess of the rate anticipated. Arthur Weiner, B-184480, May 20, 1976; B-180559, March 11, 1974.

We have previously held that an employee generally should be aware of the waiting periods between step increases and should make an inquiry about any increase not in accord with those waiting periods. Dominick A. Galante, B-198570, November 19, 1980, and cases cited therein. However, where an employee has been assigned to the wrong step within a grade upon promotion or the assumption of a new position, we have often waived any resulting overpayments. For example, we have waived overpayments resulting from administrative errors where the record has not clearly established that the employee knew, or should have known, that the rate of pay actually received at his new position was more than the rate of pay to which he was entitled. Rupert C. King, B-198760, April 27, 1981; Robert L. Zerr, B-184182, July 22, 1976. In these cases, the employees were not furnished with any pay or personnel records which were erroneous on their face, or which in any way indicated that the employee had been assigned to the wrong step within a grade. We granted waiver in the belief that these employees could not be found to be at fault since they had not been furnished with records indicating an error, and since they could not be reasonably expected to know and understand the complexities of Federal personnel regulations governing the establishment of pay rates and step advancement.

Conversely, we have denied waiver in several cases to employees who were assigned to the wrong step within a grade upon a promotion or the assumption of a new position, where evidence existed indicating that the employee actually knew of the error, or was furnished with pay and personnel records which on their face showed the existence of the error. See Beatrice M. Lansdown, B-201815, March 25, 1981; and Peter D. Bourgois, B-198562, August 28, 1980.

The record in this case contains no evidence to indicate that Mr. Vinson had actual knowledge that he had been placed in the wrong step of grade GS-9 when he began working in Sacramento. The agency states that Mr. Vinson applied for, and accepted, a position as a GS-9 employee, but it has presented no evidence to show that he was ever informed, either orally or in writing, that he was to be placed in a particular step within grade GS-9. Similarly, the record does not indicate that Mr. Vinson was ever quoted a specific figure as to what his salary would be in the new position. Since Mr. Vinson thus cannot be said to have been otherwise informed as to what his step and salary would be in the new position, his first indication of the salary he was to receive was provided in the SF-50 which effected his transfer to Sacramento. That form erroneously stated that Mr. Vinson had been placed at step 10 of grade GS-9, with a starting salary of \$9.95 per hour or \$20,699 per annum. Since Mr. Vinson had received no other information concerning his new step and salary, we believe that he may have reasonably relied on the information contained in the erroneous SF-50 as the amount he was entitled to receive in his new position. Therefore, we believe that Mr. Vinson was not at fault for failing to question his receipt of that salary.

Furthermore, since Mr. Vinson was not an expert in regard to pay and personnel matters, we find that he was not at fault for failing to question the action of the personnel specialist in using the WG pay rates in effect in Sacramento as the basis for converting Mr. Vinson's wage grade step and pay rate to the General Schedule. Under the circumstances of this case, we believe that Mr. Vinson reasonably relied on the expertise of the personnel officer in interpreting the applicable FPM regulations, and reasonably assumed that he had been assigned to the correct step of grade GS-9, since he had no reason to know or suspect he was being overpaid.

In light of the above, we do not believe that the record in this case establishes knowledge on Mr. Vinson's part concerning the overpayment of salary sufficient to indicate fraud, fault, misrepresentation or lack of good faith on his

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part. Accordingly, we reverse the determination by our Claims Group in this matter, and hereby grant waiver of the claim of the United States against Mr. Vinson in the amount of \$1,933.20.

*for* *Shilton J. Rowland*  
Comptroller General  
of the United States