

PLM2

DECISION



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

27054

FILE: B-212478

DATE: December 19, 1983

MATTER OF: Herbert A. Peck

DIGEST: An employee received erroneous payments of basic pay and a non-foreign area differential which were shown on his biweekly leave and earnings statements. The overpayments may not be waived since the employee knew or should have known from the substantial increase in pay and from an examination of his leave and earnings statements and personnel records that errors had been made. Such actual or presumptive knowledge on the employee's part carries with it an obligation to bring the matter to the attention of the appropriate official and to return the excess sum or set it aside for refund at such time as the error is corrected.

This decision is in response to an appeal of our Claims Group's denial of waiver of erroneous payments of basic pay and non-foreign area differential an Air Force employee, Mr. Herbert A. Peck, received. The overpayments may not be waived because Mr. Peck should have known or with reasonable diligence could have observed from the examination of his leave and earnings statements and other personnel documents furnished him that he was not entitled to the substantial unexplained pay increases he received, and he should have been prepared to refund them.

In August 1973 the Air Force transferred Mr. Peck from Westover Air Force Base, Massachusetts, to Anderson Air Force Base, Guam, to be the fire chief there. The Standard Form 50 (Notification of Personnel Action) Mr. Peck received indicating his transfer showed that his grade level and step remained unchanged after the transfer but that, while in Guam, he would be receiving a non-foreign area differential of 25 percent. The form also showed the annual salary and annual premium pay at Westover but showed no biweekly rates and erroneously omitted that Mr. Peck would be receiving premium pay in Guam just as he had in Massachusetts. However, with or

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without premium pay, Mr. Peck expected a substantial increase in pay due to the 25 percent non-foreign area differential. He received an increase in pay more than double the amount that he should have received if his pay had been correctly computed to include the premium pay and the non-foreign area differential. The erroneous increase was due to payroll computation errors which calculated basic pay on the basis of too many hours, calculated premium pay at the wrong rate, and calculated the differential from the wrong basic pay basis.

The pay increase Mr. Peck should have received in Guam beginning in September 1973 was approximately \$121 per biweekly pay period. He actually received an increase of approximately \$238 for that pay period. By November of 1973, when the payments became uniform, the increase should have been approximately \$141 per biweekly pay period, but Mr. Peck actually received an increase of \$323 a pay period, an overpayment of \$182. This same general ratio of overpayment to earned increase per pay period, as adjusted by general salary and step increases, continued until September 1976 when the computation error was discovered, at which time he was being overpaid about \$231 per pay period. The total overpayment was \$14,387.41. Mr. Peck's leave and earnings statements in Guam added the biweekly rate of basic pay and the biweekly premium pay, designating the total as base pay. The non-foreign area differential appeared on the statements as a biweekly rate of pay in a separate figure designated other pay. The two figures were combined for the total biweekly rate of pay. However, there was no annual amount of pay listed on the statements, even though Mr. Peck's correct grade and step were listed.

Waiver of claims for overpayments to Federal employees of pay and allowances is authorized by 5 U.S.C. § 5584 (1982) when collection of the erroneous payment would be against equity and good conscience and not in the best interests of the United States. Waiver may be granted only when there is no "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 the waiver. 5 U.S.C. § 5584(b). While Mr. Peck certifies that he had no knowledge of the overpayments, and the Air Force found no indication

of fraud, misrepresentation, or lack of good faith on Mr. Peck's or anyone else's part, the question of whether Mr. Peck was at fault for not recognizing the overpayments requires close examination.

The regulations implementing 5 U.S.C. § 5584 state that any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of the pay or allowances ordinarily would preclude waiver when the employee fails to bring the matter to the attention of appropriate officials. 4 C.F.R. § 91.5(c). We consistently have held that an employee has the responsibility to verify the correctness of the payments he receives, and where a reasonable person would have made an inquiry, but the employee did not, then the employee is not free from fault, and the claim may not be waived. Matter of Finnell, B-199800, August 12, 1981; Matter of Kirsch, B-200295, April 28, 1981. Although Mr. Peck properly expected a significant increase in pay due to receipt of the non-foreign area differential resulting from the transfer, he should have known from the documents provided him that the increase was to be about 25 percent. When the actual increase more than doubled what should have been expected, that significant increase was unexplained and should have caused Mr. Peck to make an inquiry.

Mr. Peck offers several reasons why he believes waiver of his erroneous overpayments should be granted, stating:

"A review of the attached Leave and Earning Statements shows my pay was almost consistent with little if any variation, which made me feel the amount of my pay was correct, and there was no reason for concern. Additionally, a review of the Leave and Earning Statements only shows base pay and other pay, until September of 1976."

He also submitted evidence showing that he was a conscientious fire chief who responded to numerous emergencies outside of his normal workweek for which he neither claimed nor was paid overtime compensation. He suggests that the high level of activity required of his job contributed to his not being able to review

his personnel documents. And finally, he refers to the extreme financial hardship that recovering the \$14,387.41 debt would cause his family.

We have reviewed all the material that Mr. Peck has presented and his request for waiver has received thorough consideration. Although his conscientiousness toward his work is to be commended, under the waiver statute and implementing regulations, it does not relieve him from fault in these circumstances. And the fact that he may have to suffer a financial hardship in repayment of the debt is not sufficient to authorize waiver. Matter of Lemmon, B-200450, June 18, 1981.

As to his argument that the information on his leave and earnings statements did not provide sufficient notice of the overpayment, it is our view that where an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and the waiver will be denied. Matter of Dold, B-202795, December 1, 1981. Mr. Peck's leave and earnings statements in Guam did not accurately reflect the elements of his pay and could not have resolved his pay entitlement. But he knew or should have known that he would receive a 25 percent non-foreign area differential in addition to what his pay had been. Mr. Peck's Standard Form 50 indicating the transfer showed his total annual salary, including (separately stated) his total annual premium pay that he received before the transfer. We find that a reasonable person should have noticed an increase amounting to double the expected amount, especially when the amount involved was as large as is the case here (overpayments from \$117 to \$231 per biweekly pay period). In the circumstances of this case, where Mr. Peck's records showed continuing overpayments of a substantial amount, we must conclude that he was at fault in not examining the records and notifying the appropriate official.

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

Milton J. Fowler
for Comptroller General
of the United States