

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

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FILE: B-212831**DATE:** December 13, 1983**MATTER OF:** Robert D. Keesling**DIGEST:**

An employee changed to a lower wage grade due to a reduction in force was entitled to retained pay for 2 years. The employee continued to receive the pay of the higher wage grade after the expiration of 2 years and was charged the difference between the pay received and the correct amount due. He has requested waiver of the erroneous overpayment of pay under 5 U.S.C. § 5584. Waiver is denied since he is partially at fault in failure to contact appropriate officials for an explanation when his pay did not decrease after the expiration of the retained pay period.

Mr. Robert D. Keesling requests reconsideration of our Claims Group's denial of his application for waiver of erroneous payments of pay in the amount of \$1,813.60. The overpayments resulted from a failure to reduce his pay after the expiration of 2 years of retained pay. Since the employee knew or should have known that his pay would decrease and failed to contact appropriate officials for an explanation when it did not, he is partially at fault in the overpayment, thus precluding waiver.

Mr. Keesling, an employee of the Indiana Air National Guard, was changed due to a reduction in force from a supervisory grade, WS-6, step 5, to a nonsupervisory grade, WG-11, step 5, effective April 30, 1976. However, rather than having his pay immediately reduced to the WG-11, step 5 level, he was entitled to retained pay at the higher equivalent grade and nearest rate of WG-15, step 5, for 2 years. He was advised of the downgrading and his entitlement to retained pay by letter of February 27, 1976. In addition, he was issued a standard form 50, Notification of Personnel Action, dated April 15, 1976, advising him of his change in grade, his new pay rate, and his entitlement to retained pay for

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2 years. When he received an increase in his retained pay in December 1976, he was issued a Payroll Change Slip, standard form 1162d advising him of the new rate and stating that it was a "retained rate." Again, in February 1978, he received an increase in his retained pay and he was again specifically advised by standard form 1126d dated February 24, 1978, that his pay would be retained until April 30, 1978. He received his equivalent increases as prescribed during the 2 years. His retained pay rate expired April 30, 1978, at which time his pay should have been reduced; however, through administrative error it was not. Consequently, Mr. Keesling was overpaid \$1,716 for the period May 1, 1978, through January 27, 1979, and \$97.60 for the period January 28 through February 24, 1979, resulting in a total overpayment of \$1,813.60. For most of this period Mr. Keesling was being paid \$88 more than he was entitled to per biweekly pay period.

Mr. Keesling, in his original request for waiver, contended in essence that the overpayment was the result of administrative error and that repayment would create a hardship. Waiver was denied on the grounds that he was advised that his pay would be retained until April 30, 1978, and when he did not notify appropriate officials that the amount did not decrease after May 1, 1978, he was partially at fault. Further, he was informed that his financial circumstances provide no basis for waiver.

In his appeal, Mr. Keesling reiterates that the administrative error was through no fault on his part, he had received pay raises during the period which caused him not to question the correctness of his pay or to suspect the error, and the collection of the indebtedness would impose a severe financial hardship on him. He also states that two other individuals similarly overpaid received waivers of their overpayments.

The Comptroller General is authorized to waive claims for erroneous payments 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

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interests of the United States." 5 U.S.C. § 5584. 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 regulations provide:

"* * * 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. * * *" 4 C.F.R. § 91.5(c).

If 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 waiver will be denied. Matter of Royals, B-188822, June 1, 1977.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. Matter of Fielding, B-194594, September 27, 1979.

In the present case, Mr. Keesling was correctly paid \$797.60 for the pay period ending April 22, 1978. However, he received the same amount for the pay period ending May 6, 1978, and continued to be overpaid without reduction for the subsequent pay periods through February 24, 1979. After receiving the various notices, discussed above, that he was being paid under retained

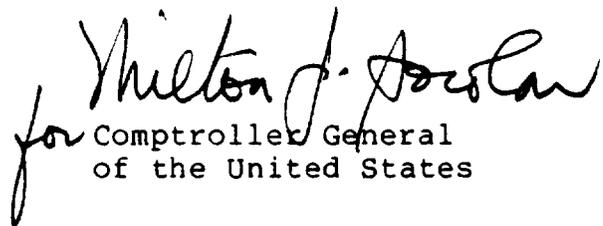
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pay rates which would expire April 30, 1978, when his pay was not reduced after April 30, 1978, he should have been aware that he was being overpaid. He should have questioned the fact that he was receiving the same amount after the 2 years of retained pay had expired, and had he done so the error could have been quickly corrected. The pay raises he received during the 2-year period do not provide a satisfactory explanation for his pay to continue at the same level after April 30, 1978. In these circumstances we must conclude that he either knew or should have known that he was being overpaid after April 30 1978, and his failure to contact appropriate officials for an explanation was at least partial "fault" on his part.

The fact that other employees' overpayments of pay may have been waived provides no basis for waiver action in this matter. Each request for waiver must depend upon the facts in the particular case. There is no evidence before us of the individuals concerned or the circumstances involved which might have made collection against equity and good conscience and not in the best interests of the United States.

Although Mr. Keesling states that severe financial hardship would occur if waiver is not granted, we have held that financial hardship alone is not a basis for waiver when other circumstances preclude such action. Matter of Harrod, B-195889, February 14, 1980, and Matter of Phillips, B-200296, November 28, 1980.

Accordingly, the denial of Mr. Keesling's request for waiver of erroneous payments of pay is sustained.


for Comptroller General
of the United States