

**DECISION**

*Plan II*  
*27106*

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

**FILE:** B-212154

**DATE:** December 23, 1983

**MATTER OF:** Diogene O. Bisier - Waiver - Nondeduction  
of Health Insurance Premiums

**DIGEST:**

A blue collar Navy employee, who suffered two work-related injuries, was twice transferred between Navy and Labor payrolls. Through administrative error, the Navy failed to withhold deductions for health benefits for over 6 years. Although the employee received leave and earnings statements, he had limited ability to understand those statements due to his limited command of English. In addition, he did not receive documents relating to his transfers between payrolls. Under the circumstances we grant waiver of the employee's indebtedness under 5 U.S.C. § 5584 (1982).

This decision is in response to an appeal of our Claims Group's denial of an employee's request for waiver of collection of erroneous payments where the agency failed to deduct health insurance premiums for over 6 years. For the reasons stated below, we overrule our Claims Group and grant waiver of collection of the employee's indebtedness to the Government.

Mr. Diogene O. Bisier, a shipwright worker employed by the Portsmouth Naval Shipyard, Department of the Navy, suffered a work-related injury and was transferred to the payroll of the Office of Workmen's Compensation Programs, Department of Labor, on September 20, 1975. He was transferred back to the Portsmouth Naval Shipyard 3 days later on September 23, 1975. Because of an administrative error by the Navy in failing to document the health benefits enrollment, the Navy did not continue health insurance deductions after Mr. Bisier returned to the Navy's payroll.

Mr. Bisier suffered another work-related injury in 1980, and he was again transferred to Labor for an 11-month period from August 26, 1980 to July 27, 1981.

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During this period, he was given a physical examination and found to have a permanent physical disability which disqualified him from performing the duties of his trade. Although certain light duty positions were available, they required command of the English language and, because of Mr. Bisier's language barrier, he could not be placed in those positions. From July 27 through October 30, 1981, he returned to work at the shipyard in a light duty position for which he qualified. Again, during this period the Navy did not collect any health insurance premiums from his salary.

On November 4, 1981, the Navy notified Mr. Bisier of a proposed action to separate him from Government service because of physical disability. On December 7, 1981, he was separated for physical disability. Meanwhile, in November 1981, when Mr. Bisier inquired about applying for a disability retirement, the Navy discovered its administrative error in failing to deduct premiums and informed Mr. Bisier of his indebtedness for the overpayments. The total amount of the indebtedness is \$3,238.21.

Section 5584 of title 5, United States Code, allows the waiver of claims against employees arising out of overpayments of pay 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 where 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 waiver. The standards for waiver set forth in 4 C.F.R. Part 91 state that waiver under these criteria necessarily depends upon the facts of each particular case. See 4 C.F.R. § 91.5(c).

The report from Portsmouth Naval Shipyard states that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Mr. Bisier, and the report notes that Mr. Bisier did not receive any of the paperwork involving the transfers between the two payrolls, Navy and Labor. The Shipyard's report also notes that the indebtedness resulted from an administrative error which went uncorrected for 6 years and that corrective measures have been taken to avoid such errors in the future.

The Navy Accounting and Finance Center, however, denied waiver on the basis that Mr. Bisier was partially at fault since he received leave and earnings statements

from the Navy which indicated no deductions were being made for health insurance. Our Claims Group ruled against Mr. Bisier for the same reason. Settlement No. Z-2848845, April 26, 1983.

On appeal Mr. Bisier, through his union representative, Richard F. Heon, points to the statement of the local commander that Mr. Bisier had no knowledge of the documents relating to his transfers between the Navy and Labor payrolls and, therefore, had no knowledge of the status of his deductions. Since the error was due to administrative error and no fault on the part of the employee, Mr. Heon argues that Mr. Bisier's indebtedness should be waived. Also on behalf of Mr. Bisier, the Honorable Gordon J. Humphrey, United States Senate, argues that repayment of the indebtedness would cause considerable hardship in view of Mr. Bisier's extremely limited income. He receives a small civil service annuity and also receives welfare payments from the State of New Hampshire.

Although we have held that receipt of leave and earnings statements places an employee on notice of an error which precludes waiver, this is not an absolute rule that must be applied in all cases. In each case the individual circumstances involved must be taken into account as required by 4 C.F.R. § 91.5(c), cited above. We believe, under the circumstances presented here, that it would be against equity and good conscience and not in the best interests of the United States to collect this overpayment. There is no indication that Mr. Bisier knew he was not being properly paid. He was a blue collar shipyard worker with a limited command of the English language. We have been advised that Mr. Bisier speaks and writes in French and that he knows only a few words in English. Therefore, his ability to understand and comprehend the information contained in the leave and earnings statements is very much in question.

Moreover, he was injured on the job and was on and off workers' compensation several times. At the present time he is retired and living on a very limited income. Under these circumstances, it would be an obvious injustice to find that Mr. Bisier was at fault through rigid application of a rule of notice that has been found applicable to other employees in other circumstances in prior cases.

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Accordingly, under 5 U.S.C. § 5584 (1982), we hereby waive collection of the indebtedness of Mr. Bisier to the Navy for the overpayments of pay described above.

for *Harry R. Van Cleave*  
Comptroller General  
of the United States