

DECISION

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

FILE: B-218981

DATE: March 24, 1986

MATTER OF: Erik Brett Sager

DIGEST:

Employee of the Department of the Interior received erroneous payments for a cost-of-living allowance in Alaska after he had been converted to a wage grade employee. The employee was on notice from his Notification of Personnel Action Form and should have otherwise known that wage grade employees were not eligible for the allowance. Since his leave and earnings statements for the period reflected that he was being paid the allowance, he is not without fault in the matter and the debt may not be waived.

This action is in response to a request from Erik Brett Sager for reconsideration of our Claims Group's November 15, 1984 denial of his request for waiver. Mr. Sager was erroneously paid a cost-of-living allowance to which he was not entitled. Our Claims Group denied waiver of the overpayment. We affirm that decision.

Mr. Sager is an employee of the United States Department of the Interior, Bureau of Land Management. While employed as a Miscellaneous Documents Examiner (GS-0963-06) in Anchorage, Alaska, he was promoted and converted to an Electronic Digital Computer Mechanic (WG-2608-8), effective January 9, 1983. Upon being converted to a wage grade position, Mr. Sager became ineligible for the cost-of-living allowance which he had been receiving as a General Schedule employee. Due to an administrative error, the cost-of-living allowance was not terminated for five pay periods after the conversion. Mr. Sager received a total overpayment of \$1,119.60 for the period between January 9, 1983, and March 19, 1983.

In April 1983, Mr. Sager was notified of the overpayment. He has requested waiver of the total amount. The agency recommends denial of the waiver because Mr. Sager had worked for several years in Alaska at the time of the conversion and knew or should have known that wage grade

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employees are not entitled to the cost-of-living allowance and his leave and earnings statements clearly reflected that the cost-of-living allowance was being paid. In addition, the agency points out that Mr. Sager's original Notification of Personnel Action form, appointing him to the General Schedule position, listed his eligibility for the cost-of-living allowance, while the appointment form for the wage grade position did not indicate he was eligible for the allowance. Therefore, the agency position is that he should have known that he was receiving erroneous overpayments and thus was not without fault in the matter.

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified Federal employees if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria are met by a finding that the claim arose from an administrative error with 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.

Fault as used in this statutory provision is not necessarily a matter of precise definition but must be determined by an analysis of all pertinent facts not only those giving rise to the overpayment, but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If, under the circumstances, a reasonable person would have made inquiry as to the correctness of the payment and the employee involved did not, then the employee could not be said to be free from fault. Raymond W. S. Lau, B-203458, September 29, 1981.

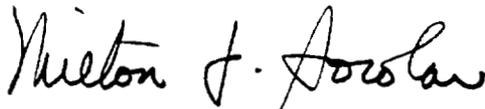
Mr. Sager indicates that when he received his first paycheck, he compared it with that of a fellow employee who had also been converted to a wage grade position, but did not check with appropriate pay officials and apparently did not review his leave and earnings statement. When Mr. Sager received \$135 over his expected base pay during each of the first two pay periods and received nearly \$300 in excess of the amount he should have expected in each of the three following pay periods, he should have been alerted that he was being overpaid.

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Mr. Sager states that he could not reasonably have been expected to suspect an overpayment since he was not told it was his responsibility to review the Notification of Personnel Action and compare it with his leave and earnings statements for discrepancies. He also argues that since the error was administrative and outside the scope of his duties he should not be responsible for the overpayment.

In this regard we have consistently held that leave and earnings statements are distributed to Government employees in part so that they may check for administrative error on the part of the Government. See, e.g., Arthur Weiner, B-184480, May 20, 1976. The employee who has been given the means to verify the correctness of his paychecks and has failed to do so, is not without fault in the matter.

It is our view that under these circumstances Mr. Sager should have been aware of the overpayment and should have brought it to the attention of the proper authority immediately. Thus, he is not without fault in the matter. Accordingly, we sustain the action of our Claims Group in denying Mr. Sager's request for waiver.

for 
Comptroller General
of the United States