

DECISION

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

FILE: B-221670

DATE: July 29, 1986

MATTER OF: Malcolm J. Clark

DIGEST:

A wage grade employee employed in Alaska by the Federal Aviation Administration who converted from a wage grade position to a General Schedule position had his pay set erroneously based upon the highest wage grade rate earned in a wage grade position held outside Alaska rather than the appropriate Alaska wage grade rate. The error continued through subsequent pay increases including employment with the Bureau of Land Management. Waiver was allowed for the period the employee accepted the overpayments in good faith, but the denial of waiver is sustained for pay periods the employee received overpayments after being notified an error had been made.

Mr. Malcolm J. Clark requests reconsideration of our Claims Group's denial of his application for waiver of the amount of \$1,206.62 of his debt to the United States. The debt arose from erroneous payments received after converting from a wage grade position to a General Schedule position and having his pay determined using erroneous wage grade rates. In light of the applicable provisions of law, our Claims Group's denial is sustained.

Mr. Clark was transferred from a wage grade position outside the Alaska region to a General Schedule position in Alaska with the Federal Aviation Administration (FAA) on September 18, 1977. He was employed as a GS-9, step 10. He was promoted from GS-9 to GS-11 on June 17, 1979, and his salary was set erroneously as a GS-11, step 8, instead of step 5. On October 7, 1979, Mr. Clark received a promotion to a GS-12. At this time, his salary was set erroneously as a GS-12, step 6, instead of step 2. On October 5, 1980, Mr. Clark was downgraded to GS-11. Due to an administrative error, his salary was set erroneously as GS-11, step 10, instead of step 8. He was paid at the GS-11, step 10, rate until October 3, 1981.

Mr. Clark was transferred to the Bureau of Land Management, Department of the Interior, on October 4, 1981. Based upon his previous salary at the FAA, he was paid at the GS-11, step 10, rate. The FAA then determined that their

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method of converting wage grade employees to the General Schedule position was erroneous and that it was necessary to correct Mr. Clark's payments during the period that he was employed by them. As a result of this action, they determined that he was overpaid \$6,636 from June 17, 1979, through October 4, 1981.

It was also necessary for the Bureau of Land Management to correct Mr. Clark's payments when they learned that he was transferred in an erroneous step. As a result of this action, he was overpaid \$2,226.62 from October 4, 1981, through April 2, 1983. Thus, the total of all overpayments was \$8,862.62. He was notified of his overpayments by the FAA on June 8, 1982.

In his original request for waiver dated November 15, 1982, Mr. Clark stated that he had no knowledge of the error in the salary he received prior to notification by the FAA and that since he was unaware of a problem, he took no steps to correct any overpayment. Our Claims Group determined that he acted in good faith in accepting the erroneous payments totaling \$6,636 while he was employed by the FAA and waived their collection. The erroneous payments totaling \$1,020 for the pay periods October 4, 1981, through May 29, 1982, made by the Bureau of Land Management were also waived due to their having been accepted in good faith. The remaining \$1,206.62 requested for waiver was denied on grounds that Mr. Clark was partially at fault in not notifying appropriate officials at the Bureau of Land Management of the correction in his salary for the time he was employed at the FAA. In his appeal from the denial, he contends in essence that at the time he was notified by the FAA of the errors, he believed that the payments were correct when made and that the Bureau of Land Management was not required to base their salary amounts on the corrected FAA payments.

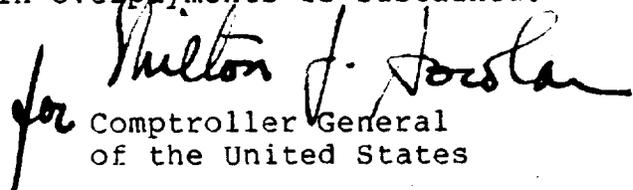
The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584, permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other persons having an interest in obtaining the waiver.

The word "fault" has been interpreted as including something more than a proven overt act or omission by an employee. Fault is considered to exist if in light of all the facts it is determined that an employee exercising reasonable diligence should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. George R. Beecher, B-192485, November 17, 1978.

It has been consistently held that when an employee is aware of an overpayment of pay when it occurs, he is not entitled to relief under 5 U.S.C. § 5584. If he accepts such an overpayment, knowing it to be erroneous, he cannot reasonably expect to retain it and he should make provision for its repayment. In such case, collection of this overpayment is not considered to be against equity and good conscience, or contrary to the best interests of the United States. Beatrice M. Lansdown, B-201815, March 25, 1981.

In the present case, all overpayments in question Mr. Clark received before he was notified by the FAA on June 8, 1982, of the error in setting his salary when he was transferred to the General Schedule position were accepted in good faith and collection would be against equity and good conscience and not in the best interests of the United States. After receipt of such notice, even though he may not have agreed with it, Mr. Clark was alerted to the possibility of continued error in his pay. He had a duty to notify appropriate officials in the Bureau of Land Management of the error in his pay grades discovered by the FAA and to inquire whether the errors would affect his pay at the Bureau. Since he did not do so, we cannot find him free from fault in accepting the overpayments for the pay periods May 30, 1982, through April 2, 1983, in the amount of \$1,206.62 after having notice of an error. Rosalie L. Wong, B-199262, March 10, 1981.

Accordingly, the action of our Claims Group denying waiver of the \$1,206.62 in overpayments is sustained.

for 
Comptroller General
of the United States