

Maguire



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Erik Brett Sager - Reconsideration
File: B-218981
Date: October 7, 1986

DIGEST

Employee of the Department of the Interior requests reconsideration of the denial of his request for waiver of an overpayment he received when he was erroneously credited with a cost-of-living allowance in Alaska. He suggests that since he took responsibility for calling attention to this overpayment resulting from an administrative error, waiver should be granted. If, however, an employee is cognizant of an error, even though he may inform the employing agency of the error, in the absence of official notice that the payments were not in error, the employee cannot reasonably expect to retain the overpayment. Hence, in this case the denial of waiver is sustained.

DECISION

This action is in response to a request for reconsideration by Erik Brett Sager, of our decision Erik Brett Sager, B-218981, March 24, 1986. In that decision, we denied waiver of overpayments made to Mr. Sager on the basis that he should have suspected the existence of an error and was at fault in failing to take corrective action. He has requested a reconsideration of the matter, suggesting that we give due regard to the fact that he did not cause the error, and reasserting that he took action to contact the proper authorities when he received an unexpected increase in the amount of his paycheck.

The facts now presented by Mr. Sager are substantially the same as those he presented in the original application for waiver. He argues that, contrary to information furnished to us in his agency's report in the matter, he did in fact bring the error to the attention of the appropriate authorities, and since the overpayment was due to an administrative error, the claim against him should be waived. With regard to the alleged discrepancies between the facts as presented by Mr. Sager and the facts as presented by the agency, when

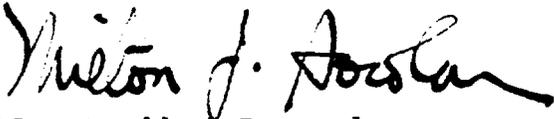
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there is such a conflict, our Office generally accepts the facts as reported by the agency absent evidence furnished by the individual concerned which clearly shows that the facts submitted by the agency are in error. See, B-167602, August 4, 1976.

Nevertheless, we could not properly grant a waiver in this case even if we accepted as fact Mr. Sager's statement that he was concerned about erroneously being paid a cost-of-living allowance and therefore brought the error to the attention of the appropriate officials. Assuming this is true, waiver is still not permissible since under the waiver statute, 5 U.S.C. § 5584, we have long held that if an employee is cognizant of an error, even though he may inform the employing agency of the error, in the absence of official notice that the payments were not in error, the employee cannot reasonably expect to retain the overpayment. See, e.g., B-172117, May 12, 1971. We also point out that while the error may have been caused by an administrative error, that in and of itself is not a basis to allow waiver. The waiver statute authorizes the waiver of overpayments resulting from administrative error only in limited circumstances, when the employee is without fault in causing and reporting the error, and collection action would otherwise be "against equity and good conscience and not in the best interests of the United States." Compare Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

In the alternative, Mr. Sager has argued that he did not and could not reasonably have been expected to know that he was being overpaid. The record and his argument above, however, seem to indicate that he was aware of the possibility that he was being overpaid.

Accordingly, we affirm the denial of waiver in this case.


for Comptroller General
of the United States