



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Violet M. Whited
File: B-222763
Date: February 24, 1987

DIGEST

Civilian employee of the Navy who was temporarily promoted to grade GS-13 was erroneously overpaid when she continued to receive grade GS-13 salary after being returned to her former grade GS-12 position. Since employee may reasonably have believed that her temporary promotion had been extended, this portion of the debt may be waived. Employee was subsequently erroneously overpaid a second time due to an erroneous step increase. Waiver of this resulting debt is also allowed since employee acted properly in notifying the agency of overpayments and the employee may reasonably have assumed that such an increase was a result of the merit pay system put into effect in October 1981.

DECISION

This action is in response to a request from Ms. Violet M. Whited for reconsideration of our Claims Group's October 1, 1985 denial of waiver. Ms. Whited, an employee of the Navy, was erroneously overpaid a total of \$1,190.48 and requested waiver of the overpayment. We find that the debt should be waived.

BACKGROUND

Ms. Whited was employed as a grade GS-12 incentive awards specialist with the Department of the Navy when on May 4, 1980, she received a temporary promotion to grade GS-13, step 3, for a period not to exceed 120 days (i.e., until September 5, 1980). This temporary promotion was based on her assumption of the duties of her immediate superior, who had departed due to illness. Ms. Whited indicates that the next higher level supervisor advised her that he would have the temporary promotion extended and, thus, at the end of the initial 120-day period when the higher pay continued she believed the temporary promotion had been extended. In this regard her superior states that he asked the personnel

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office to extend Ms. Whited's promotion but was told that it could not be extended without the approval of the Office of Personnel Management. He states that he requested that such approval be obtained. Instead Ms. Whited's temporary promotion expired and she was returned to grade GS-12, but due to an administrative error she continued to receive grade GS-13 pay from September 6 through November 1, 1980, which resulted in an overpayment of \$412.88. Effective November 1, 1980, Ms. Whited received a permanent promotion to grade GS-13.

The remainder of her debt was incurred when, effective May 3, 1981, Ms. Whited was erroneously granted a within-grade ~~step~~ increase to GS-13, step 4, which was not reflected in her pay until November 29, 1981. As a result of the second error, between November 1981 and August 1982 Ms. Whited was erroneously overpaid \$777.60.

The total overpayment she received, resulting from the temporary promotion and the within-grade increase, was \$1,190.48.

Ms. Whited requested waiver of the debt, but waiver was denied by the Navy Accounting and Finance Center. The Navy based its determination on the fact that Ms. Whited received a Notification of Personnel Action, Standard Form 50 (SF-50), clearly indicating that she had been temporarily promoted only until September 5, 1980. At the expiration of that period, she did not receive any document indicating that the temporary appointment to the higher grade had been extended. Thus, the Navy decided that Ms. Whited should not have expected to continue receiving the higher rate of pay and should have informed the appropriate persons of the overpayment. With regard to the second overpayment, the Navy found that Ms. Whited, by her own admission, was aware of the erroneous increase, and thus she was not entitled to retain the overpayment.

Our Claims Group, by letter dated October 1, 1985, upheld the Navy's determination. Ms. Whited has requested further consideration of her waiver application. She asserts that she could not reasonably have been expected to be aware that she was receiving pay in excess of her proper entitlement. She states that, with regard to the first overpayment, she had been advised by her supervisor that he was initiating action to extend her temporary promotion and that at his request she continued to perform the duties of the GS-13 position beyond the initial 120 days. With regard to the second overpayment, she indicates that she was not aware that she was being overpaid since she assumed that the increase was a result of the implementation of the merit pay system in October 1981, and that 10 months passed before she was

notified that the increase was an error. She also asserts that any overpayments were due to administrative error and therefore should be waived.

ANALYSIS AND CONCLUSION

Under 5 U.S.C. § 5584, the Comptroller General has the authority to waive claims of the United States arising out of erroneous overpayments of pay if collection would be against equity and good conscience and not in the best interest of the United States. However, waiver may not be granted if there exists, in connection with the claim, an indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver.

We interpret the word "fault," as used in 5 U.S.C. § 5584, as including something more than a proven overt act or omission by the concerned employee. Thus, we consider fault to exist if in the light of all the facts and circumstances it is determined that the employee knew or should have known that an error existed, and should have taken appropriate action to have it corrected even though the error was caused initially by others. The general standard we employ is to determine whether a reasonable person should have been aware of the existence of an overpayment. See 4 C.F.R. Part 91. See also Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

In the present case, Ms. Whited was temporarily promoted to GS-13, and when the temporary promotion expired, she continued to receive pay at the GS-13 level. While it is unclear exactly what assurances she was given, at the very least, her supervisor told her that he would attempt to have the temporary promotion extended. Since she received no notice that the extension for the temporary promotion had been denied, and since her rate of pay did not decrease, it seems that Ms. Whited assumed that the extension had been granted. Considering all the circumstances in this case and the supporting statement made by her supervisor, we find that a reasonable person might have made such an assumption. Thus, we find no indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee, and this part of the debt may be waived.

With regard to the erroneous within-grade step increase, the Navy acknowledges that Ms. Whited brought the erroneous increase in pay to light when she questioned the appropriate officials as to the source of the increase. Ms. Whited suggests that she was not actually aware that she was being overpaid, since she believed that the increase was due to

the new pay system, but she repeatedly questioned the matter trying to resolve it. That is, she states that beginning with the pay period ending December 12, 1981, she was aware that she was receiving an unexplained pay increase of 54 cents an hour or about \$43 per biweekly pay period. While specific details and figures are not provided, the Navy indicates that as a result of Ms. Whited's inquiries, a review of her files was performed by the civilian payroll office and the civilian personnel office. Ultimately, this led to the determination that she had been erroneously overpaid.

Ms. Whited did properly bring the increase to the attention of officials, who later discovered that an error was the reason for the excessive payments. In addition, the record shows that there were numerous errors regarding Ms. Whited's pay throughout this 3-year period. It is our view that under the circumstances, a reasonably prudent employee might have assumed that, since she was not notified of the error for 10 months after her inquiry, the payment resulted from the newly implemented merit pay system. Thus we find that since there is no indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee, this portion of the debt also may be waived.

We conclude, therefore, that Ms. Whited's entire debt may properly be waived under 5 U.S.C. § 5584, and accordingly, waiver is hereby granted.

for 
Comptroller General
of the United States