



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Phillip C. McGuire - Waiver of Erroneous
Overpayments
File: B-226147
Date: June 2, 1987

DIGEST

An employee received overpayments of pay because the agency erroneously deducted only 7 percent for retirement instead of 7.5 percent for retirement as applicable for law enforcement officers. The error occurred when the employee was promoted, and, as a result of a promotion, the employee was taken off administratively uncontrolled overtime and his gross pay per pay period decreased. The employee expected his retirement withholding to decrease, and he states that he did not notice the \$10.53 difference in his retirement deduction. Given that this is such a minor discrepancy in his withholding and that the deduction, which decreased simultaneously with his decrease in gross pay, appeared reasonable on its face, we are aware of no reason to expect or require the employee to audit the amount shown. The overpayments are waived since the employee is not at fault and could not reasonably have been expected to question the accuracy of this pay.

DECISION

ISSUE

In this decision we hold that Mr. Phillip C. McGuire, an employee of the Bureau of Alcohol, Tobacco and Firearms (Bureau), Department of the Treasury, may be granted a waiver of erroneous payments made to him as a result of his agency's underdeduction for retirement. This decision overrules a denial of his application for waiver under 5 U.S.C. § 5584 made by our Claims Group, Z-2877995, September 8, 1986.

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BACKGROUND

Mr. McGuire was promoted to the position of Assistant Director (Criminal Enforcement), a Senior Executive Service position, on August 22, 1982. As a result of this promotion, Mr. McGuire no longer received administratively uncontrolled overtime (AUO), and his gross pay per pay period decreased from \$2,143.20 to \$2,105.60. Consequently, Mr. McGuire's retirement withholding decreased from \$160.74 to \$147.39 per pay period.

Since Mr. McGuire is a law enforcement officer, a 7.5 percent retirement deduction should have been withheld from his gross pay per pay period. However, due to a coding error, only 7 percent was withheld for the period April 22, 1982 through January 18, 1986. The difference between the 7.5 percent withholding and the 7 percent withholding ranged from \$10.53 to \$13.21 per pay period before the coding error was detected. As a result, the employee received erroneous salary payments totaling \$1,156.20.

Mr. McGuire received an SF-50 which contained several notations relative to his new position, one of which stated that the position was subject to a 7.5 percent retirement deduction. Mr. McGuire also received leave and earnings statements which distinguished his base salary from other earnings amounts and his deductions.

By letter dated January 30, 1986, Mr. McGuire appealed the denial of his request for waiver by the Bureau to our Claims Group. By letter to the Comptroller General dated May 16, 1986, the Bureau withdrew its objection to the grant of a waiver of the overpayments and concurred with the employee's request, stating:

"Based upon the previous position taken by your office that it is incumbent upon an employee to verify the correctness of entries on Earnings and Leave Statements that have been provided to the employee, the Bureau initially denied Mr. McGuire's request for a waiver of the overpayment. However, a recent Comptroller General decision, B-219122, Matter of Hollis W. Bowers, January 27, 1986, overrules that previous line of cases, and grants the employee a waiver of

the overpayments made to him as the result of his agency's underdeduction for Federal Employees Group Life Insurance premiums. We can find absolutely no distinction between that case and Mr. McGuire's situation."

Our Claims Group sustained the action of the Bureau in denying waiver, deciding that Hollis W. Bowers, 65 Comp. Gen. 216 (1986) (B-219122), was not applicable and that Mr. McGuire should have examined his leave and earnings statements more closely and reported any discrepancy to the proper officials for remedial action.

By letter dated October 29, 1986, Mr. McGuire appealed our Claims Group action, contending that, despite careful review of his leave and earnings statement upon promotion, he was not aware of the \$10.53 discrepancy since he expected his retirement withholding to decrease in accordance with his loss of AUO, and, when it did, it was not unreasonable that the new figure did not prompt any inquiry. The Bureau, in a letter dated October 29, 1986, endorsed Mr. McGuire's appeal of the denial of waiver, and distinguished prior decisions of this Office from the facts of this case to support the Bureau's position that a reasonable person in Mr. McGuire's position, even upon careful inspection of his leave and earnings statement, would not have discovered a minor discrepancy in his retirement withholdings such as the one at issue here.

OPINION

The Comptroller General is authorized by 5 U.S.C. § 5584 (1982) to waive claims for overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Such authority may not be exercised if there is an 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 a waiver of the claim. Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, waiver hinges on whether Mr. McGuire is found to be at fault.

We consider "fault" to exist if, in light of all the circumstances, it is determined that the individual concerned knew or should have known that an error existed, but failed to take action to have it corrected. See 4 C.F.R. § 91.5 and Frederick D. Crawford, 62 Comp. Gen. 608 (1983), and cases cited therein. In making this determination, we ask whether a reasonable person in the employee's position should have been aware that he was receiving payment in excess of his proper entitlements. Crawford, cited above.

We have held that if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, then the employee is not without fault and waiver will be denied. See L. Mitchell Dick, B-192283, November 15, 1978, and cases cited therein. This rule is particularly true in the case of leave and earnings statements. As we stated in Arthur Weiner, B-184480, May 20, 1976, we cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. Such review, and reporting of discrepancies for remedial action, is an essential function in the Government's attempt to reduce payroll errors.

However, we have also held that if the amount shown on a leave and earnings statement appears reasonable on its face, we are aware of no reason to expect or require an employee to audit that amount. The question of whether the amount appears sufficiently reasonable to excuse a closer inspection depends on the facts in each case. Thus, where an employee received overpayments of pay because the agency failed to deduct full insurance premiums from his pay, the employee was not held at fault since the premiums stated on the leave and earnings statement did not appear unreasonable and the employee was unaware that the premiums should have been higher. The overpayments were waived since the employee could not have been expected to question the correctness of his pay. Hollis W. Bowers, cited above.

At the same time, we emphasize that Bowers should not be read too broadly. We will continue to deny waiver if a discrepancy in pay reflecting an overpayment is or could reasonably be expected to be ascertained from reading the leave and earnings statement.

In this case, we do not believe that fault may be imputed to Mr. McGuire. Since he knew that his gross biweekly pay was going to decrease due to the loss of the overtime pay, he expected that there would be a decrease in his retirement withholding. Upon inspection of his leave and earnings statement, he observed that in fact his retirement withholding did decrease. The only means by which Mr. McGuire could have detected the error would have been to actually calculate the correct amount of retirement withholding, using the figure he knew to be 7.5 percent. However, since review of the statement in no way raised any suspicion as to its accuracy, he saw no need to verify the withholding amount.

We believe it would be unreasonable in this case to require Mr. McGuire to make that calculation in light of the fact that the amount deducted appeared reasonable on its face and there is no reason to assume Mr. McGuire should have detected such a minor discrepancy in amount. We believe these facts support a finding that Mr. McGuire was not at fault in accepting the overpayments. We find that collection action would be against equity and good conscience and not in the best interests of the United States.

Accordingly, we overturn our Claims Group's determination. The amount of \$1,156.20 representing the underdeductions for retirement withholding is hereby waived.

for Milton J. Jordan
Comptroller General
of the United States