



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joanne B. Fuesel - Waiver of Erroneous
Payments
File: B-229394
Date: February 2, 1988

DIGEST

After leaving government service in August 1982, an employee received payment for 2 hours of overtime and 90 hours of lump-sum leave. Due to an administrative error, the employee received another check in October 1982, representing an overpayment of 80 hours of regular pay. When the employee brought this overpayment to the attention of proper authorities, she was told the payment was correct and represented additional payment for leave not taken. Waiver is granted since employee, who had no special knowledge of personnel law or payroll processes, reasonably relied on information provided her and was not advised that the payment was erroneous until nearly 2 years later.

DECISION

Ms. Joanne B. Fuesel, a former employee of the Department of the Navy, appeals the May 7, 1987 settlement of our Claims Group (Z-2878796) denying her request for waiver of \$494.40 in erroneous salary payments. For the reasons stated below, we grant the waiver.

BACKGROUND

Ms. Fuesel resigned from government service in August 1982. At that time, she received a check in the amount of \$441.41 (net amount) representing payment for 2 hours of overtime and 90 hours of lump-sum leave. In October 1982, Ms. Fuesel received another check in the amount of \$377.35 (net amount) reflecting 80 hours of regular pay. This latter check was an erroneous overpayment.

In her request for waiver, Ms. Fuesel stated that when she received the check in October 1982, she contacted several offices within the Department of the Navy, including the Personnel Office, the Payroll Office, and the Finance

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Center, in an attempt to determine whether the payment was proper. Ms. Fuesel states that she was asked if there were any outstanding annual leave hours on the leave and earnings statements she continued to receive. Since there were outstanding leave hours indicated on the statements, she was told that the check she had received was for payment of those outstanding hours and it was therefore a proper payment. When Ms. Fuesel said that she thought she had been paid for these hours already, she was told that she must not have been. Ms. Fuesel further stated that since she continued to receive leave and earnings statements showing that she had an outstanding leave balance, she believed that she was entitled to the payment.

The overpayment was not discovered by the Navy until 1984, and, in a letter from the Navy Regional Finance Center dated March 19, 1984, Ms. Fuesel was informed that she had in fact been overpaid in the amount of \$494.40 gross salary and would be required to refund that amount. In response, Ms. Fuesel requested a waiver of the erroneous payment.

In a March 17, 1986 memorandum, the Navy Accounting and Finance Center denied Ms. Fuesel's request for waiver, stating that since she had resigned in August, it is reasonable to assume that she should not have expected to receive regular pay for hours she did not work. Ms. Fuesel then requested an appeal of that decision, and the Department of the Navy forwarded Ms. Fuesel's request for waiver of the overpayment to our Claims Group. The Navy Accounting and Finance Center recommended that Ms. Fuesel's request for waiver be denied, stating that she should have known that the leave balance on further leave and earnings statements was incorrect.

In its May 7, 1987 settlement, our Claims Group denied waiver by determining that Ms. Fuesel was at fault since she reasonably should have known that her annual leave balances on subsequent leave and earnings statements were incorrect and that she was not entitled to the pay. While our Claims Group acknowledges that Ms. Fuesel made several inquiries regarding the correctness of her pay, our Claims Group found that she should have further questioned the matter with the appropriate authorities and retained the amount in question until the matter was thoroughly resolved..

Ms. Fuesel disputes our Claims Group's determination, stating that she spoke to several officials in the Navy personnel and payroll offices and was assured that the payment was correct. She maintains that she reasonably relied on those assurances and, therefore, waiver is proper. She questions how much further a "reasonable person" should be required to go and upon what advice that person should rely to determine that a matter is thoroughly resolved.

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.

We stated in B-165663, June 11, 1969, with respect to the requirement that there be no indication of fault on the part of the employee, that:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful 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 it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

We believe that a reasonable and prudent employee should have questioned the correctness of her pay under the circumstances described above. The record shows that Ms. Fuesel questioned the correctness of her pay immediately following the October 1982 payment, and this fact was attested to by her former supervisor. Ms. Fuesel alleges

that appropriate officials advised her that this pay was correct, and this is not disputed in the Navy's responses to her request for waiver.

Ms. Fuesel was not formally advised that she was not entitled to the payment until March 1984, approximately 17 months after the date of the initial overpayment. This delay in notification is particularly problematic in light of the fact that, according to her payroll records, a second check in the same amount was also prepared for issuance to Ms. Fuesel 2 weeks after the October 1982 check was sent. This error was apparently identified by the Navy and was corrected before another erroneous check was sent. However, Ms. Fuesel was not notified of any erroneous payments until almost 2 years after she had left government service.

There is no indication that Ms. Fuesel had any special knowledge of personnel laws or payroll processes or that she worked in a position in which such knowledge was required. She occupied grade GS-4 and GS-5 positions, and it appears that, based on her annual leave accrual rate, she had less than 3 years of service in the federal government. Under these circumstances, we believe that it was reasonable for Ms. Fuesel to rely on the assurances given her by officials in the Navy personnel and payroll offices that the payment was correct. See Garnette F. Miller, B-221672, Oct. 16, 1986; John J. Short, B-212402, Dec. 14, 1983; Lula F. Fones, B-203186, Dec. 29, 1981; James H. Schroeder, B-186262, June 28, 1976; Thomas J. Strenger, B-182311, Nov. 7, 1974. Since Ms. Fuesel acted with reasonable diligence, we do not believe it would be fair to require her to have pursued this matter any further than she did.

Therefore, upon further consideration of the matter, our Claims Group settlement dated May 7, 1987 is reversed, and the overpayment in the gross amount of \$494.40 made to Ms. Fuesel is hereby waived under the authority of 5 U.S.C. § 5584.



Acting Comptroller General
of the United States