



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sheldon H. Avenius, Jr. - Waiver of Overpayment
of Salary - Health Insurance Premiums
File: B-226465
Date: March 23, 1988

DIGEST

An agency inadvertently stopped deducting health insurance premiums from the salary of an employee who was transferred to an overseas duty station in late 1977, and the error continued until 1982. Although there is no evidence of fraud, misrepresentation, or lack of good faith on the part of the employee, we conclude that he was partially at fault in the continuation of the overpayment. The employee should have reviewed his earnings and leave statements to ascertain whether his health insurance premiums were being deducted from his salary and why his salary had increased as a result of the failure to make such deductions. Thus, waiver of the overpayment is denied.

DECISION

This decision is in response to an appeal by Mr. Sheldon H. Avenius, Jr., an employee of the United States Information Agency (USIA), from the settlement action by our Claims Group, Z-2858691, June 12, 1985. That settlement denied waiver of an overpayment of salary in the gross amount of \$1,941.42 to Mr. Avenius. The overpayment was caused by the agency's failure to deduct health insurance premiums from the employee's pay during the period January 15, 1978, through January 8, 1982. For the reasons stated later in this decision, we affirm the settlement action by our Claims Group.

BACKGROUND

Mr. Avenius was transferred from Washington, D.C., to Brazil on October 23, 1977, and he continued to receive his payments of salary from the USIA payroll office through pay period No. 26 which ended on December 31, 1977. Effective January 1, 1978, Mr. Avenius was paid by the Washington

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Finance Center (WFC), Department of State, which services certain overseas employees. The WFC made the deduction for health insurance coverage for pay period No. 1, January 1 through 14, 1978, but, through inadvertence, did not make such deductions for the pay period ending January 28, 1978, or for subsequent pay periods. The failure to deduct health insurance premiums resulted in an increase in pay of \$12.99 for the pay period ending January 28, 1978, and similar increases thereafter.

Mr. Avenius was transferred back to Washington, D.C., in September 1981, and his salary continued to be paid without any deductions for health insurance through January 9, 1982.

In January 1982, Mr. Avenius was transferred to New Delhi, India. His new payroll office in Bangkok, Thailand, reviewed Mr. Avenius' pay records and discovered the initial error made by WFC and the subsequent errors made in failing to deduct health insurance premiums from his salary. The Bangkok payroll office began making health insurance deductions from Mr. Avenius' pay, and, by letter dated September 10, 1982, he was informed of the overpayment of pay in the total amount of \$1,941.42.

By his letter dated September 22, 1982, Mr. Avenius stated that he did not have all of his pay records with him and that his health insurance premiums may have been deducted for only part of his tour of duty in Brazil. However, Mr. Avenius contended that the overpayment resulted from administrative error, that he was not at fault in causing the overpayment, and that repayment of the overpayment would impose a financial burden upon him. Further, since he made no health insurance claims during his assignment in Brazil, Mr. Avenius argued that he had no way of testing whether he actually had health insurance coverage. Mr. Avenius stated that he did file health insurance claims during his assignment in Washington, D.C., in 1981, and he remitted the sum of \$225.09 representing the health insurance deductions not withheld during that period of time. Therefore, the corrected amount of the overpayment of pay is \$1,716.33.

Mr. Avenius has also pointed out that WFC makes payroll deductions for health insurance under different headings, for example, state taxes, and therefore it is not possible for the employee to ascertain whether the proper deductions have been made. In a letter dated September 23, 1982, addressed to the American Federation of Government Employees, Local No. 1812, Mr. Avenius stated that ". . . [I]t seems completely unreasonable to me and an incredible admission that for four years WFC did not deduct for health insurance as I instructed. Of course, it is partly my fault, but once I saw that it was deducted, I must have forgotten to check as the months went on."

OPINION

Under the provisions of 5 U.S.C. § 5584 (1982 & Supp. III 1985), the Comptroller General of the United States may waive, in whole or part, a claim arising out of an erroneous payment of pay to an employee when the collection thereof would be against equity and good conscience and not in the best interests of the United States. The implementing regulations are contained in 4 C.F.R. Parts 91-93 (1987). Section 91.5(c) of those regulations provides that the previously stated criteria are generally met by a finding that the erroneous payment of pay occurred through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. A grant of waiver of overpayments of pay must be based upon the facts involved in the particular case under consideration. However, the fact that collection of the overpayment may result in financial hardship to the employee is not a basis upon which waiver may be granted when other circumstances exist which preclude such action. James T. Harrod, B-195889, Feb. 14, 1980.

Our Office has stated that if it is determined that, under the circumstances, a reasonable person would have made inquiry as to the correctness of his or her pay, but the employee did not, then the employee is not free from fault and the overpayment may not be waived. Roosevelt W. Royals, B-188822, June 1, 1977; B-165663, June 11, 1969.

Generally, where 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, he is not without fault and waiver will be denied. Frederick D. Crawford, 62 Comp. Gen. 608 (1983); Arthur Weiner, B-184480, May 20, 1976. This rule is particularly relevant in the case of earnings and leave statements. Thus, our Office has long held that a waiver of indebtedness will not be granted where it appears that the employee did not verify the information provided on his payroll change slips or earnings and leave statements. See also L. Mitchell Dick, B-192283, Nov. 15, 1978; Royals, supra.

In our decision, Simon B. Guedea, B-189385, Aug. 10, 1977, the agency erroneously failed to make appropriate payroll deductions of health insurance premiums for more than 5 years. The employee's request for waiver of the resulting indebtedness was denied in view of the employee's fault in failing to verify the correctness of the information (or lack thereof) provided on his earnings and leave statements. In Guedea we stated that the employee's agency has the responsibility to prepare proper payrolls and the duty to take steps to ensure that this responsibility is properly discharged. We pointed out, however, that the employee has the responsibility of verifying the correctness of the payments he or she receives, and where a reasonable person would have made inquiry but the employee did not, then he or she is not free from fault and the claim may not be waived. Guedea, cited above.

In the case before us, the overpayment resulted from an administrative error in not continuing the deductions of health insurance premiums from Mr. Avenius' biweekly pay during the approximate 4-year period in question. There is no evidence of fraud, misrepresentation, or lack of good faith on the part of Mr. Avenius. Therefore, the basic question is whether, under the circumstances of this claim, Mr. Avenius was at fault; that is, whether as a reasonable person, he should have further reviewed his payroll records for accuracy during the approximate 4-year period in question, after initially noting that the proper deduction for health insurance premiums had been made for pay period

No. 1 in January 1978. See Guedea, supra; B-172117, May 12, 1971.

As noted in our Claims Group's settlement, Mr. Avenius' earnings and leave statement for the pay period ending January 14, 1978, clearly showed in the box marked "Health" a deduction in the amount of \$12.99. The very next earnings and leave statement showed no deduction under "Health" and a check amount which had increased by exactly \$12.99. We believe this constituted an unexplained increase in pay which would cause a reasonable person to inquire as to its correctness. His failure to do so constituted fault on his part in the continuation of the overpayment.

Accordingly, under the provisions of 5 U.S.C. § 5584 and 4 C.F.R. § 91.4, waiver of repayment of the overpayment of pay, in the net amount of \$1,716.33, may not be granted. The settlement action by our Claims Group, dated June 12, 1985, is sustained.



for Comptroller General
of the United States