



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Patricia A. Santoro - Waiver of Overpayment -
Erroneous Step Increase
File: B-229446
Date: April 7, 1988

DIGEST

Employee was erroneously granted a quality step increase to step 6 from step 4, resulting in salary overpayments. Request for waiver under 5 U.S.C. § 5584 (1982) is denied since employee is not without fault in failing to question the increase. Employee's current financial situation should be considered in arranging a reasonable repayment schedule for the amount due, to the extent consistent with 4 C.F.R. § 102.11 (1987).

DECISION

This decision is in response to an appeal of our Claims Group's denial of a waiver of erroneous payments of salary to Patricia A. Santoro, an employee of the Defense Logistics Agency (DLA). Because of an administrative error, Ms. Santoro was erroneously granted a within-grade step increase and was overpaid \$1,014.84. For the reasons set forth below, the denial of waiver by our Claims Group is affirmed.

BACKGROUND

According to the record, on October 11, 1981, Ms. Santoro received a within-grade increase from GS-6, step 3, to step 4. On July 3, 1983, she received a Quality Step Increase. Due to an administrative error, however, she was placed in step 6 of GS-6 instead of step 5. Consequently, when she received her next within-grade increase on October 9, 1983, Ms. Santoro was erroneously placed in step 7 of GS-6 rather than step 6. These administrative errors caused Ms. Santoro to be overpaid \$1,014.84 from July 3, 1983, through October 5, 1985.

On October 10, 1985, the error was discovered and corrected personnel actions were issued. Ms. Santoro noticed a

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decrease in her take-home pay and she promptly contacted the Office of Civilian Personnel (OCP), which informed her of the 1983 error. On January 24, 1986, she formally asked for a clarification of what she believed to be a wrongful deduction in pay without notice. On January 27, 1986, OCP notified Ms. Santoro that she owed the government \$1,074.84 (this amount was a miscalculation; the actual amount is \$1,014.84) and that within 30 days interest would begin to accrue.

Subsequently, Ms. Santoro requested a waiver of the entire overpayment. She asserted that she did not notice the two-step progression and that a mere \$13 a week "overpayment" error was not something she would suspect. Ms. Santoro claims she would not have thought it an error in any event because she knew it was possible to jump more than one grade with a promotion. She stressed that she was willing to work out a repayment schedule because the terms of repayment demanded by OCP were burdensome.

In August of 1986, DLA forwarded Ms. Santoro's claim to our Claims Group and recommended that waiver be denied. Waiver was denied under the provisions of 5 U.S.C. § 5584 (1982) on September 3, 1987. The Claims Group found that Ms. Santoro was partially at fault because as a reasonable employee, she should have questioned her entitlement to a two-step jump from step 4 to step 6 in 1983.

DISCUSSION

Under 5 U.S.C. § 5584 the Comptroller General is authorized to waive claims resulting from erroneous payments of pay and allowances if collection would be "against equity and good conscience and not in the best interests of the United States." This 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 Ms. Santoro 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 should have known that an error existed but failed to take corrective action. See, e.g., John A. De Hoyos, B-219005, June 17, 1986; 4 C.F.R. § 91.5(c) (1987). In making this determination, we consider whether a reasonable person in the employee's position should have been aware that an error had been made. If under the circumstances a

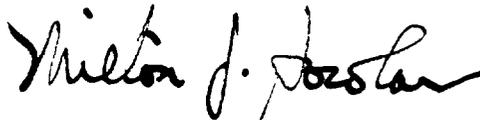
reasonable person would have made inquiry as to the correctness or accuracy of a grade or step increase and the employee involved did not, then the employee is not free from fault in the matter and the claim should not be waived. See, e.g., Herbert H. Frye, B-195472, February 1, 1980. In this regard, we have consistently stressed that each employee is responsible for reviewing payroll data issued by employing agencies, such as Leave and Earnings Statements and SF-50's. See John A. De Hoyo, supra, and decisions cited.

In the present case, Ms. Santoro's erroneous quality step increase from step 4 to step 6 was documented by her Leave and Earnings Statements and by an SF-50 dated July 1, 1983. The decisions of this Office have held that an employee should be aware of the waiting periods between step increases and should make inquiry about an increase not in accordance with those waiting periods. Herbert H. Frye, supra; compare Alfred P. Feldman, B-212361, February 13, 1984.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility for determining the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a government agency or official acquire no right to the money and are bound to make restitution. John A. De Hoyo, supra.

Accordingly, we sustain the Claims Division denial of waiver of the overpayment.

Finally, we note that during the pendency of her waiver request Ms. Santoro more than once offered to repay the money if a reasonable repayment schedule could be agreed to. According to Ms. Santoro, however, the DLA provided no guidance on the matter. To the extent provided for in 4 C.F.R. § 102.11 (1987), collection of the claim should take into consideration Ms. Santoro's current financial situation and a reasonable repayment schedule should be arranged for the amount due. See Herbert H. Frye, supra.



Acting Comptroller General
of the United States