



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Steven P. Bell - Waiver of Overpayment of Salary -
Wage Grade Increases

File: B-228661

Date: August 18, 1988

DIGEST

An employee, whose position was reclassified from prevailing rate to the General Schedule (GS), was entitled to pay retention and should have received 50 percent of the annual comparability increases paid to GS employees. The agency erroneously paid the claimant the full prevailing rate comparability increases for 2 years, resulting in an overpayment of salary. Under 5 U.S.C. § 5584 (1982), repayment of that portion of the overpayment which occurred on or before June 27, 1984, when he made a written request for waiver of the overpayment, is waived since there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. However, waiver is denied for the overpayment of pay occurring after June 27, 1984, when the employee became aware that he was being overpaid.

DECISION

This decision is in response to an appeal by Mr. Steven P. Bell, an employee of the Bureau of Land Management (BLM), United States Department of the Interior, from the settlement action by our Claims Group, Z-2879976, Mar. 26, 1987. The Claims Group settlement waived repayment by Mr. Bell of a portion of an erroneous overpayment of salary, and Mr. Bell is seeking waiver of the remaining portion of the indebtedness. For the reasons stated later in this decision, we sustain the settlement action by our Claims Group, with the modification that waiver of the overpayment of pay be extended through June 27, 1984.

BACKGROUND

On November 30, 1980, Mr. Bell's position was reclassified from a Laborer, WG-3, step 5, to a Forestry Technician, grade GS-4. His salary remained at \$17,596 per year under

043038/136613

pay retention rules, and he should have begun receiving 50 percent of the annual comparability increases granted to General Schedule employees.^{1/} However, in October 1981, Mr. Bell received the full pay adjustment at the WG-3, step 5 level to \$18,886 per annum, retroactive to July 26, 1981. On May 16, 1982, he was promoted to grade GS-5, and he continued under pay retention at this erroneous annual salary of \$18,886. In September 1982, Mr. Bell was given another full pay adjustment at the WG-3, step 5 level to \$19,781 per annum, retroactive to July 25, 1982.

Mr. Bell stated that he discovered he was being overpaid when the personnel office withheld a cost-of-living increase in 1984. He says that he made an inquiry to his local personnel office and was informed that he was not granted a pay adjustment because he had previously received full wage grade increases instead of the correct 50 percent General Schedule increases.

The records of BLM do not show exactly when the agency discovered that Mr. Bell had been overpaid, but the agency states that the error was discovered no later than January 1984, since the personnel office had withheld a comparability increase which would have been effective in that month. However, the record does not clearly show that Mr. Bell became aware that he was being overpaid until June 27, 1984, the date he made a written request for waiver. In his letter of appeal, he states that personnel office officials told him that he was overpaid on June 27, 1984.

The BLM and our Claims Group concluded that Mr. Bell did not have any special knowledge of the personnel laws governing comparability adjustments in a pay retention situation and that he acted in good faith and was not at fault in accepting the erroneous payments totaling \$3,703.56 through January 1984. The Claims Group concluded, however, that since Mr. Bell became aware in January 1984 that he was receiving erroneous payments of salary, collection of that portion of the indebtedness which occurred after January 8, 1984 (\$1,578.93), would not be against equity and good conscience nor would it be contrary to the best interests of the United States.

^{1/} See 5 U.S.C. § 5363(a)(3) (Supp. III 1979) and 5 C.F.R. part 536 (1981) which limit pay increases to 50 percent of the increase payable for the employee's current position until the retained rate becomes equal to or less than the rate of the current position.

In his letter of appeal, Mr. Bell states that when he discovered he was being overpaid, he acted in good faith and complied with the personnel department. He reports he made a written request for waiver of repayment but that the local office of the agency delayed approximately 10 months in acting on his request. Mr. Bell states that he had no idea of how much he was being overpaid during the 10-month period. He says that the personnel office told him that "everything would be O.K., as overpayments in previous cases were waived when due to administrative error." Mr. Bell states that payment of the indebtedness would put an extreme hardship on him and his family.

OPINION

Under the provisions of 5 U.S.C. § 5584 (1982), the Comptroller General may waive, in whole or in 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.

We concur with the conclusion reached by BLM and our Claims Group that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Mr. Bell in the creation or continuation of the erroneous payment of pay until the error was discovered. We disagree with our Claims Group and BLM as to when the employee knew he was being overpaid. Our review of the record discloses that Mr. Bell did not, in fact, become aware that he was being overpaid until June 27, 1984, the date he made written application for waiver of the overpayment of salary. Therefore, we conclude that waiver should be granted through June 27, 1984.

With respect to the period after June 27, 1984, our Office has long held that if an employee accepts an overpayment of

salary, knowing it to be erroneous, such acceptance constitutes a lack of good faith on his or her part. In these circumstances, the employee cannot reasonably expect to retain the overpayment and should return the amount of the overpayment or set it aside for refund to the United States at a later date. While we fully recognize that Mr. Bell, as an employee at the GS-4 grade level, could not be expected to be knowledgeable of the intricacies of the federal pay system, the fact remains that, on June 27, 1984, when he made his written request for waiver, he definitely knew that he was being overpaid. Although BLM delayed approximately 10 months in correcting the error due to computer malfunction, such delay does not constitute a basis for granting waiver of the overpayment of pay during this period of time. Therefore, collection of the overpayment of pay would not be against equity and good conscience and would be in the best interests of the United States. See Judith E. Brinker, B-228669, Mar. 4, 1988; Beatrice M. Lansdown, B-201815, Mar. 25, 1981; Fred W. Adams, B-200657, Dec. 1, 1980; Marvin L. Peek, B-188803, June 15, 1977.

The statement by personnel office officials advising Mr. Bell that "everything would be O.K., as overpayments in previous cases were waived when due to administrative error" does not provide a basis for waiver of the overpayments which occurred after June 27, 1984. This statement is only relevant with respect to the overpayments which occurred prior to June 27, 1984.

The settlement action by our Claims Group is therefore sustained, with the modification that waiver of the overpayment of pay be extended through June 27, 1984.

for 
Comptroller General
of the United States