



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ronald E. Williams - Waiver of Overpayment of Salary

File: B-227321

Date: September 1, 1988

DIGEST

An employee was reduced in grade at his request, from grade GS-8, step 4, to grade GS-7, step 8, in order to enter a professional job series. The agency later determined that the employee's salary should have been set at the step 7 level of grade GS-7. The employee's claim for waiver of the overpayment is granted since he had no specialized knowledge of the federal pay system. His memorandum requesting the downgrading and stating the grade, step level, and salary he expected to receive was based upon instructions from the agency personnel office.

DECISION

This decision is in response to an appeal by Mr. Robert E. Williams, an employee of the Bureau of Land Management (BLM), United States Department of the Interior, from the settlement action by our Claims Group, Z-2876832, dated August 12, 1986. The settlement denied waiver of an overpayment of salary of \$625.60. For the reasons stated later in this decision, we grant waiver of the overpayment of salary and we overrule the settlement action by our Claims Group.

BACKGROUND

On December 8, 1983, Mr. Williams requested that he be downgraded from his position as a Surveying Technician, grade GS-8, step 4 (\$20,172 annually), to the position of Land Surveyor, grade GS-7, step 8 (\$20,423 annually). In his memorandum of that date, Mr. Williams stated "I request that I be changed to GS-7, Step 8, \$20,423.00 pa, position of Land Surveyor, to be effective 12-11-83. I feel this is to my benefit as it will put me into a professional series (GS-1373-07) position." The downgrading was effective December 11, 1983. Later, BLM determined that

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Mr. Williams' salary should have been set at the grade GS-7, step 7 level with an annual salary of \$19,871.

The agency denied waiver based upon Mr. Williams' statement in his December 8, 1983, memorandum where he stated his new salary was \$20,423, which was \$251 greater than his annual salary prior to the downgrading. By requesting an increase in salary, the agency concluded that such request was not proper and that Mr. Williams was partially at fault for the resulting overpayment.

Our Claims Group denied waiver based upon the Standard Form (SF) 50 dated December 9, 1983, which showed that Mr. Williams had been downgraded as requested but that his salary had increased by \$251 annually. The Claims Group stated that although Mr. Williams may have been confused as to the exact step level to which he was entitled, he should have expected his salary to remain the same or decrease. The Claims Group concluded that when Mr. Williams received the SF-50 showing the increase in salary, he should have at least questioned his entitlement to this increase, and the failure of Mr. Williams to take the proper action makes him at least partially at fault.

In his letter of appeal, Mr. Williams disagrees with the Claims Group settlement, and he points out that under the highest previous rate rule, if a rate falls between two rates in a grade, the agency may pay the employee at the higher rate. Mr. Williams also argues that the SF-50 he received in 1983 noted that he was "selected from agency's merit promotion plan," and he argues that indicates he should be "getting more money."

OPINION

Under the provisions of 5 U.S.C. § 5584 (1982), the Comptroller General of the United States may waive, in whole or in part, a claim of the United States against a person arising out of an erroneous payment of pay 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 (1988). Section 91.5(c) 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.

In the case before us, the overpayment resulted from an administrative error in placing Mr. Williams at step 8, instead of step 7 in grade GS-7 incident to the downgrading. There is no evidence of fraud, misrepresentation, or lack of good faith on the part of Mr. Williams. Therefore, the basic question is whether he was at fault; that is, whether, as a reasonable person, he knew or should have known he was being overpaid at the grade GS-7, step 8 level.

Our review of the record in this case does not support the conclusion that Mr. Williams was at fault in the creation and continuation of the overpayment. His memorandum of December 8, 1983, states his expectation to be downgraded to the grade GS-7, step 8 level at an annual salary of \$20,423. This statement does not evidence any knowledge on the part of Mr. Williams of the proper rate of pay or any expectation that his salary should have remained the same or decreased. There is no indication that Mr. Williams had knowledge of the intricacies of the federal pay system. Rather, it appears that the local BLM personnel office instructed Mr. Williams to prepare the memorandum and incorrectly led him to believe that the grade GS-7, step 8 level was correct. Finally, there is no indication that Mr. Williams was counseled by BLM officials concerning the financial consequences of his voluntarily requesting a reduction in grade in order to enter into the professional series as a Land Surveyor. See Michael A. Uhorchak, B-223381, Apr. 28, 1987.

Under these circumstances, we believe that Mr. Williams was not at fault in failing to question or inquire about his grade, step level, and salary upon being downgraded. See Anne Pesinkowski, B-211166, Aug. 25, 1983; James S. Vinson, Jr., B-211345, July 21, 1983. Accordingly, we grant waiver of the overpayment of salary in the amount of \$625.60.

We have been informally advised by officials of BLM that most or all of the overpayment has been collected, with interest. Therefore, the agency should refund the total amount collected from Mr. Williams upon proper application by him.

for 
Comptroller General
of the United States