The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cathy A. Clark - Waiver - Underdeduction of Health Insurance Payments

File: B-230464

Date: December 12, 1988

DIGEST

Waiver under 5 U.S.C. § 5584 of erroneous salary payments resulting from the agency's failure to increase an employee's health insurance deduction is inappropriate where it is determined that the employee concerned had notice of the error and failed to bring it to the attention of appropriate officials.

DECISION

Ms. Cathy A. Clark, a Veterans Administration employee, appeals our Claims Group's denial of her request under 5 U.S.C. § 5584 (1982) for waiver of $1,055.47 in erroneous salary payments she received during the period July 12, 1981, through May 24, 1986. The overpayments resulted from the agency's failure to decrease its prorated contribution to Ms. Clark's health insurance coverage upon her conversion from full-time to part-time employment. The Claims Group denied Ms. Clark's request for waiver because it found her to be partially at fault for failing to take appropriate measures to rectify the error. We sustain the Claims Group's action.

BACKGROUND

Ms. Clark, an employee in the Veterans Services Division of the Veterans Administration Regional Office in Cleveland, Ohio, converted from full-time to part-time employment on July 12, 1981. At that time the agency advised her that it would increase withholdings from her pay for group health insurance coverage in accordance with 5 U.S.C. § 8906(c) (1982), which requires proration of the government's contribution for benefits for part-time employees enrolled in certain health insurance plans. However, because of an

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administrative error, the agency continued to make biweekly deductions from her pay at the rate for full-time employees instead of at the appropriate prorated amount. The agency did not correct the error until May 24, 1986, when it discovered through an audit of part-time employees' payroll records that insufficient deductions from Ms. Clark's pay had resulted in an overpayment to her of $1,055.47.

The record indicates that the rate of deductions per pay period from Ms. Clark's salary following her conversion to part-time employment remained at $8.82 for the last 13 pay periods in 1981, decreased to $8.03 in 1982, increased to $9 in 1983, and continued to increase each year thereafter through pay period 9 in 1986. Based on this record, the Veterans Administration recommended waiver of Ms. Clark's indebtedness on the ground that she reasonably may not have been aware of the error prior to June 3, 1986, when the agency notified her of its claim for the overpayment, since her biweekly leave and earnings statements reflected an overall increase in withholdings during the period in question. Our Claims Group denied Ms. Clark's request for waiver, however, because it determined that she was partially at fault for failing to apprise agency officials of her overpayment since her leave and earnings statements, which indicated that her deduction remained the same or decreased for the first year and a half following her conversion to part-time status, placed her on constructive notice of the error where the agency had previously informed her that her withholdings would increase.

Ms. Clark now seeks reconsideration of that decision, claiming that on several occasions she visited the payroll department on other matters and inquired as to the status of her account. She states that she was told at each of these visits that her account was fine.

DISCUSSION

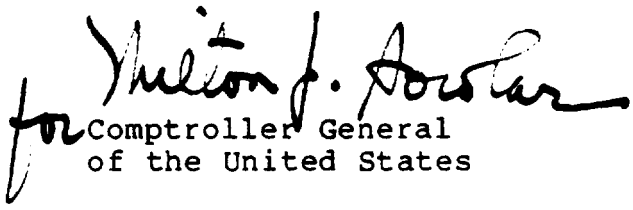
The Comptroller General is authorized by 5 U.S.C. § 5584 to waive claims for overpayment of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. Such authority may not be exercised if there is an indication of fraud, misrepresentation, 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. Since there is no indication of fraud, misrepresentation, or lack of good faith on Ms. Clark's part in this case, the determination of whether waiver is appropriate turns on the issue of fault.

We consider fault to exist if, in light of all the circumstances, it is determined that the individual concerned had or should have had notice of the error. See 4 C.F.R. § 91.5(c) (1988). In making this determination, we ask whether a reasonable person in the employee's position should have been aware that he was receiving payment in excess of his proper entitlements. See Charles J. Zeman, B-199802, Nov. 28, 1980.

We have held that if 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, then the employee is not without fault and waiver will be denied. See L. Mitchell Dick, B-192283, Nov. 15, 1978, and cases cited therein. This rule is particularly true in the case of leave and earnings statements.

In the present case, we believe that Ms. Clark should have been aware that she was receiving erroneous payments. At the time of her transfer to part-time employment, Ms. Clark knew that the agency would increase deductions from her salary for insurance premiums. Yet, her leave and earnings statements revealed that these deductions in fact remained the same and then decreased for the first year and a half following her conversion. Since Ms. Clark's leave and earnings statements placed her on constructive notice of the overpayments, we find that her failure to note the error and to bring it to the attention of appropriate officials makes her at least partially at fault and thereby precludes waiver under 5 U.S.C. § 5584. Her general inquiries into the status of her account are not sufficient to meet the requirement that she notify the agency of the error.

Accordingly, waiver of the erroneous salary payments to Ms. Clark is denied.



for Comptroller General
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