



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gary A. Richardson - Erroneous Lump-Sum
Payment - Waiver

File: B-253636

Date: April 20, 1994

DIGEST

Employee was erroneously paid his salary for two pay periods following his retirement at which time he was owed over \$11,000 for accrued annual leave and other pay. Four months later, he received a lump-sum check of about \$2,300 which was erroneously calculated, and then a second check of about \$5,900 which corrected the calculations of the initial check and included a deduction of about \$2,800 for the overpayment of salary paid after his retirement. Employee was not furnished an explanation of the computation of the two checks, and several months later, after he made written inquiries concerning errors in his W-2, wage and taxes statement, the agency discovered he had been overpaid \$2,300, for which he seeks waiver. Waiver is denied since after receiving two erroneous salary payments after retirement and two unexplained lump-sum leave payments he should have been aware of the strong possibility he had been overpaid. He was obligated to hold the funds for possible refund pending review by the agency.

DECISION

This decision is in response to a request by Mr. Gary A. Richardson, a former employee of the Department of State, for review of the record upon which our Claims Group sustained the denial of his request for waiver of an erroneous lump-sum leave payment he received in the amount of \$2,279.47.¹ Upon review, we find that the record supports the denial of waiver of the erroneous payment.

Background

The record shows that Mr. Richardson, a communications electronics officer, retired from the foreign service

¹Claims Group's Settlement Certificate 2-2917882, Jan. 21, 1993.

effective May 3, 1991. Due to the agency's delayed processing of the personnel action documents, his status was not changed to retired until June 3, 1991, resulting in his being erroneously paid regular salary for two pay periods after his retirement in the total net amount of \$2,847.05. At about this same time, Mr. Richardson was expecting a lump-sum payment for 416 hours of accumulated annual leave, totaling about \$11,000, and some overtime and danger pay he believed due him.

Apparently the agency experienced delays in settling Mr. Richardson's pay account and issuing his final lump-sum payment. He indicates that he contacted several employees in the agency's Consolidated Payroll Division on July 22, finally speaking to a Mr. Thompson who told him the check for his accrued leave would be processed on August 8. When by September 1, he had not received the check nor any other communication, he wrote to the Director General of the Foreign Service informing him that he had not received a check for his 416 hours of leave amounting to about \$11,000, nor had he received any communication from the agency explaining the reasons for the delay. In the letter, he also inquired about payment for 17 hours of overtime work he performed during his last pay period of work and payment for a danger pay allowance for a period in 1989 he served in Bogota.

He does not state that he discussed the two erroneous salary payments he received with the payroll personnel when he spoke with them in July nor did he mention those payments in his letter to the Director General.

On September 5, 1991, a lump-sum leave payment check in the amount of \$2,279.47 was mailed to his last known address in Virginia. However, Mr. Richardson had moved to New Mexico, and did not receive this check at that time.

By letter dated September 23, 1991, the Acting Director of Personnel, responding to Mr. Richardson's September 1 letter to the Director General of the Foreign Service, advised Mr. Richardson that a check for lump-sum accrued leave and salary, including 17 hours of overtime, had been mailed to his Virginia address. The Acting Director also stated that he understood that an agency employee had called Mr. Richardson recently and explained that payment would be reauthorized to his New Mexico address, and that the payroll division would send him a letter explaining the computation of the lump-sum payment. The Acting Director further advised Mr. Richardson that action would be taken to obtain documentation necessary to authorize payment of the danger pay allowance.

In the meantime the initial check for \$2,279.47 apparently was forwarded from Virginia to Mr. Richardson in New Mexico where he received it and cashed it. Also during September, the Payroll Office reviewed Mr. Richardson's pay account and issued a check in the amount of \$5,969.11 which was processed and mailed to the New Mexico address on September 16, 1991, and a tracer was put on the September 5 check.

The agency states that the second check was for the full correct amount (\$5,969.11) due Mr. Richardson after deductions. It was based on a gross amount of \$11,223.62 for 416 hours of leave and some overtime, less deductions for taxes and the \$2,847.05 in salary overpayment he had been paid in June. The first check (\$2,279.47) was based on erroneous computations, and apparently the agency had assumed it would be returned uncashed. In this regard, the agency indicated that when the payroll employee called Mr. Richardson in September to tell him a new check would be sent to him in New Mexico, that employee also told him to return the first check should he receive it. Mr. Richardson emphatically states, however, that no explanation or computation was received with either check and he was never told to return either check. He states that since he was expecting a payment of about \$11,000, he cashed both checks, which totaled \$8,248.58, and credited them against the amount he had expected to receive. He notes that he again wrote to the agency's payroll office on November 5 inquiring about when he would receive the explanation of the computation of his lump-sum payment. He also stated in that letter that he appreciated receiving some of the funds due him and inquired about the danger pay he had been told the agency was pursuing for him.² He states he never received a reply to this letter, a copy of which is in the record.

Mr. Richardson again does not mention the June salary overpayments nor does his November 5 letter refer to them nor state that he had received two lump-sum checks.

By letters dated January 29 and March 10, 1992, Mr. Richardson wrote to the agency's payroll office, complaining that the W-2 forms (Wage and Tax Statements) they had furnished him for 1991 did not agree with the last earnings and leave statement he had received regarding the amounts withheld for Virginia income taxes. He asked for a corrected W-2 so that he could file his tax return. Apparently as a result of these inquiries and an inquiry Mr. Richardson says his congressman made on his behalf, the agency audited his payroll account to determine why the discrepancy occurred. As a result, by letter of May 22,

²We understand that in June 1993 the danger pay was paid to him, in the amount of \$113.

1992, the agency advised Mr. Richardson that several errors by the payroll office had been discovered which had caused the W-2 to be incorrect, and they furnished him a corrected W-2. At this time they also furnished him an itemization of his account showing the gross amount he was due upon retirement for leave and overtime as \$11,223.62 and deductions for taxes and the salary overpayment which resulted in the net payment of \$5,969.11, the amount of the second check he had received in September 1991. The letter advised him, therefore, that he had received an erroneous payment when he cashed the first check for \$2,279.47, and they asked that he refund that amount. After subsequent explanatory correspondence and an apology for the various errors and failures to communicate, the agency advised Mr. Richardson he could request waiver of the debt. He did so, but the agency denied waiver on the basis that he should have known he had received an overpayment. Our Claims Group sustained the denial.

Mr. Richardson states, however, that he was not aware nor was he apprised of any alleged overpayment until May 1992 when he received the letter from the agency informing him of the overpayment. He states that 4 months after his retirement, and only after he had written to the Director General of the Foreign Service, was action taken to pay any of the \$11,000 due him for accrued annual leave. He contends that he received the \$2,279.47 check only after intervention by the Director General, and with no explanation of the calculation, and later when he received the other check for \$5,969.11, it too came without any explanation of its calculation. Mr. Richardson further states that at no time was he told to return either check to the Department. He further states that the agency did not respond to his letters concerning his incorrect W-2 wage and tax statements until his Congressman inquired on his behalf. He states that these errors caused him to file his 1991 income tax returns using erroneous W-2 wage and tax statements, and as a result he incurred interest charges and additional costs in filing amended tax returns.

Mr. Richardson, however, does not address the \$2,847.05 in salary overpayment he received in June 1991, after his retirement, which he should have recognized as erroneous.

The agency has admitted various errors in this matter and recognized that it was Mr. Richardson's inquiries regarding his W-2 that prompted the audit of his payroll account in 1992 that led to the discovery of the overpayment. The agency maintains, however, that he was aware of the overpayment and has the responsibility to remit it.

ANALYSIS

Under the provisions of 5 U.S.C. § 5534 (1988), 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, contained in 4 C.F.R. Parts 91-93 (1993), provide 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. 4 C.F.R. § 91.5(c).

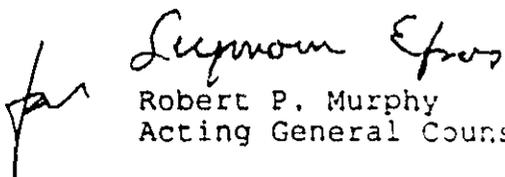
In this case, the erroneous payments occurred because of agency administrative errors overpaying Mr. Richardson's salary and in miscalculating the amount of the final payment due him. These circumstances, alone, however, do not necessarily provide a basis for waiver of the overpayment. In this regard, when an employee receives a significant unexplained payment, he has a responsibility to set it aside, available for refund, while pursuing an explanation from responsible agency officials. See e.g., Beatrice M. Landown, B-201815, Mar. 25, 1981.

Here, Mr. Richardson received regular salary payments for the two pay periods following his retirement, which he should have recognized were erroneous and set them aside for refund while bringing them to the attention of agency officials. Subsequently, he received the initial erroneous lump-sum check of \$2,279.47 and the second check for \$5,969.11 without any explanation as to the bases for computation of either check, which combined with the previous \$2,847 salary overpayment equaled \$11,095.63, about what he expected was the gross amount due him without any deductions for taxes. While Mr. Richardson denies that he was ever told to return the \$2,279.47 check, contrary to the agency's statement, he does not dispute that he spoke with an agency official who told him a second check was being "reauthorized" to his new residence in lieu of the check sent to his old residence. When he then received two checks at his new residence, in addition to the overpayments of salary he had received for two pay periods in June, he should have been aware that there was a strong possibility he had been overpaid.

While it was Mr. Richardson's inquiries about his W-2 that led the agency to audit his account and discover the erroneous payment, it would appear that if he had set out in one of his letters to the agency that he had received salary payments for two pay periods in June after he retired plus

two lump-sum checks in September, the error could have been discovered much sooner.

Accordingly, we find that Mr. Richardson should have been aware that the erroneous salary payments he received in June and the two lump-sum payments he received in September totaled more than he was entitled to receive, and he should have been prepared to refund the excess upon resolution of the errors. Therefore, it would not be against equity and good conscience and it would be in the best interests of the United States to require repayment. Accordingly, the Claims Group's denial of waiver of the \$2,279.47 overpayment is sustained.

 Seymour E. Fox

Robert P. Murphy
Acting General Counsel