



Decision

Matter of: Ronald L. Porcella
File: B-255591
Date: August 10, 1994

DIGEST

An employee who was receiving an interim geographic adjustment (IGA) differential, was telephonically informed by an agency administrative official that the IGA payments might be in error. When the error was later confirmed and repayment was requested, the employee requested waiver of the debt. Partial waiver was granted by our Claims Group for the payments received during the period prior to notice of error. On appeal, the Claims Group action is sustained. Verbal notice by an administrative official of possible pay error imposed an obligation on the employee to set aside the amount in question for repayment if necessary. Since the error was later confirmed, it is not against equity and good conscience to require repayment of the amounts received after notice was given.

DECISION

This decision is in response to correspondence from Mr. Ronald L. Porcella, who is appealing from our Claims Group Settlement Z-2918638, Sept. 24, 1993, which granted only partial waiver of his debt incident to an overpayment of an interim geographic adjustment (IGA) differential. We concur with our Claims Group's action, for the following reasons.

Beginning in 1988, the task of relocating the agency's National Strong-Motion Program to a more centralized location in California was initiated. In spring of 1990, action was taken to establish a permanent branch in Fresno for the Strong-Motion Program because the office lease in Menlo Park was to be canceled.

In August 1990, Mr. Porcella, an employee of the United States Geological Survey, United States Department of the Interior, stationed in Menlo Park, California, was asked to relocate to Fresno, California, to acquire temporary

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office/storage space for the Program. At approximately the same time, a personnel action was initiated by the Menlo Park office to change Mr. Porcella's duty station to the Fresno area, but it was not acted upon by the U.S. Geological Survey headquarters in Reston, Virginia.

In January 1991, an 8 percent IGA differential was authorized for the San Francisco area, to include Menlo Park. However, Fresno is outside that area. Since no documents had been issued to officially transfer Mr. Porcella from Menlo Park to Fresno, he began receiving the IGA differential.

On January 13, 1992, even though an SF-50 notification of change of duty station had yet to be issued to Mr. Porcella, he was informed telephonically by his administrative officer that he might be erroneously receiving the IGA differential. Thereafter, it was determined that he had actually been transferred to Fresno prior to January 1991, and an SF-50 was issued on February 12, 1992, showing a December 2, 1990, effective date of transfer. The transfer document was not received by Mr. Porcella's administrative officer until April 2, 1992. As a result, by the time Mr. Porcella's status was clarified and the IGA differential payments stopped, he was overpaid \$4,252.46 for the period January 13, 1991, through April 18, 1992.

Our Claims Group granted waiver of \$3,208.46, representing the IGA differential overpayments received by Mr. Porcella for the pay periods of January 13, 1991, through December 28, 1991, and denied waiver of \$1,044, representing the payments received by Mr. Porcella after he was informed about the possible error.

In his appeal, Mr. Porcella argues that he was only told on January 13, 1992, that he "might be" receiving erroneous IGA payments, even though he had not yet been transferred from Menlo Park to Fresno. Secondly, he argues that the earliest date he actually knew that the transfer would be made retroactively and, therefore, that the IGA payments would become erroneous, was on April 2, 1992, when he received the SF-50 notification of transfer which had been signed on February 12, 1992. It is his view that, since the April 2 date was his official notice date, all IGA payments made prior to that date should be waived.

Waiver of a debt under the provisions of 5 U.S.C. § 5584 (1988) is an equitable remedy whereby the Comptroller General is authorized to waive debts arising from pay or allowances if "the collection . . . would be against equity and good conscience and not in the best interests of the United States."

We have held that an employee who accepts payments after notice that they are erroneous cannot reasonably expect to be able to retain them and should make provision for eventual repayment. We see no essential difference between notice of error and notice of possible error regarding overpayments of compensation. It is not unreasonable to presume that the official had sufficient information at hand to warrant communicating with Mr. Porcella at that time. Therefore, it is our view that when Mr. Porcella received verbal notification of possible error, he was under an obligation to set aside the IGA payments for possible repayment, at least until being informed that the payments were not erroneous.

Since Mr. Porcella was notified on January 13, 1992, of possible error, which was later confirmed, we do not consider it against equity and good conscience to require him to repay that part of the erroneous pay received after that date.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

¹Martha C. Barrios, B-245449, Nov. 26, 1991, and decisions cited.

Date: August 10, 1994
To: Director, Claims Group - OGC
From: Acting General Counsel - Robert P. Murphy
Subject: Ronald L. Porcella - Partial Waiver -
B-255591-O.M.

We are returning Claim File Z-2918638 in the case of Mr. Ronald L. Porcella.

By decision B-255591, dated today, copy attached, we have sustained your action to disallow waiver in Mr. Porcella's case for the interim geographic adjustment differential payments received by him after the notice of January 13, 1992.

Attachments