



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bruce C. Hanson—Waiver—Post Differential

File: B-260849

Date: September 19, 1995

DIGEST

Employee requests waiver of erroneous payments occurring prior to formal notification of error by the agency. The request is denied because he knew or had reason to know of the error before formal agency notification. Therefore, collection of the overpayment is not considered to be against equity, good conscience, or in the best interest of the United States, even though the employee brought the situation to the attention of the proper authorities and sought explanation or correction of the error.

DECISION

This decision is in response to correspondence from Mr. Bruce C. Hanson, who is appealing from our Claims Group Settlement Z-2927891, December 13, 1994, which granted only partial waiver of his debt incident to an overpayment of post differential (PD). We concur with our Claim Group's action for the following reasons.

On March 9, 1992, Mr. Hanson, a Geodesist with the Defense Mapping Agency (DMA), Patrick Air Force Base, was transferred to his new overseas duty station in Kwajalein Atoll, Marshall Islands. Because of an administrative oversight by the DMA Human Resources Office, Mr. Hanson was authorized PD allowances at an outdated rate of 15 percent of base salary, instead of the correct rate of 10 percent of base salary. Consequently, Mr. Hanson received the incorrect PD rate for the period of March 23, 1992, through December 2, 1993.

On August 16, 1993, after hearing from other federal employees on the island that the PD rate had changed, Mr. Hanson sent a letter to DMA Human Resources indicating concern about the accuracy of the PD rate and requesting verification. In late September 1993, DMA Human Resources personnel, following verification of the new PD rate with the State Department, orally advised Mr. Hanson of the reduced PD rate. Following this notification, Mr. Hanson completed a revised Standard Form 1190, Foreign Allowance Application, Grant & Report to reflect the

new 10 percent PD rate. DMA Human Resources received this application in late September and Mr. Hanson received a formal notification of the correct PD rate on November 2, 1993. The new rate became effective in December 1993. As a result of these occurrences, Mr. Hanson was overpaid \$3,389.24 during the period of March 23, 1992, through December 2, 1993.

Our Claims Group granted waiver of \$2,750.84, representing the PD overpayment received by Mr. Hanson during the periods of March 22, 1992, through August 7, 1993, and denied waiver of \$638.40, representing the payments received by Mr. Hanson after he became aware of the possible error in August 1993.

In his appeal, Mr. Hanson argues that he was formally told of the correct PD rate on November 2, 1993, and that his August 16, 1993, letter to DMA Human Resources requesting verification of the correct PD rate does not constitute awareness of an incorrect rate. Consequently, it is his view that all overpayments prior to DMA formal written notification in November 1993 should be waived.

OPINION

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or other person having an interest in obtaining waiver. In this case, the agency determined that the overpayments were initiated by an administrative error by the agency, and there is no indication in the record that the error was caused by fraud, misrepresentation, fault or lack of good faith.

We have held that an employee who accepts payments after notice that they may be erroneous cannot reasonably expect to be able to retain them and should make provision for eventual repayment.¹ We have also held that employee notice begins when the employee should reasonably know of the error or the possibility of an error in pay, not the date of formal notification from the agency.²

In this case, Mr. Hanson became aware on or before August 16, 1993, of the possibility that his salary was being miscomputed. His August 16, 1993, letter specifically states that "in recent months many concerns and questions have been

¹Ronald L. Porcella, B-255591, Aug. 10, 1994, and decisions cited.

²Terry R. Allison, et al., B-256934, Sept. 20, 1994.

expressed concerning the PD authorized for the Marshall Islands" Therefore, we believe that Mr. Hanson should have retained the excess salary payments he subsequently received for possible refund to the government. Collection of the overpayments in this case would not be against equity and good conscience and would be in the best interest of the United States.

Accordingly, the Claims Group's settlement is affirmed.

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