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Mr. Bernstein, Civ. Serv.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187636

DATE: May 22, 1978

**MATTER OF: Jack M. Bernstein - Waiver of Overpayment -
Reconsideration**

DIGEST: Employee was initially denied waiver of overpayment of living quarters allowances (LQA). Reason for denial was employee's failure to inform new employing agency of prior denial of LQA by previous employer. New evidence furnished by agency indicates employee in fact informed agency of prior denial of LQA, and that his department head considered employee not to be local hire. In view of new evidence demonstrating employee's good faith, waiver is approved.

Mr. Jack M. Bernstein, a civilian employee of the U.S. Marine Corps, requests reconsideration of our decision in Jack M. Bernstein, B-187636, March 2, 1977, in which we denied his request for waiver of his indebtedness for overpayment of living quarters allowances in the amount of \$8,296.75. The facts in this case are fully set forth in our decision of March 2, 1977, and need not be reiterated here except as necessary. Our Claims Division initially denied Mr. Bernstein's request for waiver. As explained to Mr. Bernstein in a letter dated July 14, 1976, that denial was based on a conclusion that he was at fault for failing to inform the appropriate Marine Corps officials that he had properly been denied the allowance in the course of his previous employment with the Department of the Army. Mr. Bernstein then appealed the Claims Division's determination to this Office. On March 2, 1977, we issued a decision, B-187636, sustaining the denial of waiver.

On October 28, 1977, the General Counsel of the American Federation of Government Employees forwarded to our Office a copy of a letter written by Mr. Bernstein. Mr. Bernstein's letter, dated October 6, 1977, furnishes new evidence concerning the initial agency determination to pay the living quarters allowance. In short, Mr. Bernstein contends that upon his employment by the Marine Corps, he informed Marine Corps officials of the Army's previous denial of the living quarters allowance, and that he was subsequently informed by such officials that the payment of the allowance would be proper.

In view of the additional information provided by Mr. Bernstein, we requested a further administrative report concerning this matter. The administrative report contains a statement made by Colonel James J. Harp, USMC, who was the Base Maintenance Officer and the head of the Department in which Mr. Bernstein was employed. His statement provides:

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"To fill the vacancy I initiated a recruitment through the Civilian Personnel Office at Camp Butler. As I recall, the position was advertised throughout DoD and of the applicants, Mr. Burnstein (sic) was selected as the most qualified.


"I was aware that he was at the time of selection employed by the Department of the Army at a location other than Okinawa. It was my opinion which I expressed to the Civilian Personnel Office as well as to Mr. Burnstein (sic) that: (1) He was not a local hire, since his name was submitted to me as a Department of Army U.S. Civilian Employee from a location other than Okinawa and (2) In that he was a transfer from the Department of the Army his status appeared to be the same as any U.S. Civilian transferred to Okinawa.

"Mr. Burnstein (sic) did inform me of his past employment and his record also revealed that employment. He also revealed the problems with allowances and the status at the time, e.g. he had been authorized the allowance at his previous command."

Our previous denial of Mr. Bernstein's request for waiver was based on the fact that he was at fault for failing to inform the Marine Corps of the Army's denial of a living quarters allowance. The statement submitted by Colonel Harp, however, indicates that Mr. Bernstein did inform the Marine Corps of his prior problems with respect to the overseas allowances and differentials. Further, Colonel Harp states his opinion that Mr. Bernstein was not a local hire and that his status appeared to be the same as any other U.S. civilian employee transferred to Okinawa. In view of this new information showing Mr. Bernstein's efforts to inform his employing agency of the denial of the allowance by his prior employer, and the representations made to him by his department head, we now believe that Mr. Bernstein acted in good faith in this matter and that fault should not be imputed to him in these circumstances. See Thomas J. Strenger, B-182311, November 7, 1974.

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Accordingly, our decision in this matter dated March 2, 1977, is overruled and the overpayments made to Mr. Bernstein are hereby waived under the authority of 5 U.S.C. 5584.


Acting Comptroller General
of the United States