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Blatch
C.P.

DECISION



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

FILE: B-188492

DATE: February 16, 1978

MATTER OF: Harold G. Wells - Waiver of Salary
Overpayment

- DIGEST:
1. Request for waiver of overpayment denied. In view of employee's inconsistent statements, record does not support assertion that he had no knowledge of the overpayment at the time it occurred.
 2. Waiver is denied even under assumption that employee was without knowledge of erroneous overpayment. While lack of knowledge may tend to demonstrate good faith, it is not sole determinant of whether waiver should be granted. Where lack of knowledge is due to fact that agency discovered error and notified employee before he received bank statement, perusal of which would have put him on notice of error, it is not against equity and good conscience to require refund of amounts erroneously paid.
 3. The 3-year statutory limitation in 5 U.S.C. 5584(b)(2) does not preclude reconsideration of applications for waiver which had been previously considered by this Office within the statutory period.

This is a request for further consideration of the action of our Claims Division which denied waiver of the Government's claim against Mr. Harold G. Wells for erroneous overpayment in the gross amount of \$600.80.

The letter from our Claims Division denying the application for waiver issued on September 10, 1971, and Mr. Wells' request for further consideration was not received in this Office until July 14, 1975, almost 4 years later. However, we have held that the 3-year statutory limitation in 5 U.S.C. 5584(b)(2) (Supp. IV, 1974) does not preclude reconsideration of applications for waiver

B-138492

which has been previously considered by this Office within the statutory period. B-175449, July 27, 1972; 54 Comp. Gen. 644 (1975). Accordingly, this request is being considered as an appeal from the September 10, 1971, action of our Claims Division.

The record shows that Mr. Wells had been employed as an Electronic Engineer by the Department of the Air Force at Lindsey Air Station in Weisbaden, Germany. Effective December 15, 1969, he was reassigned to Tinker Air Force Base in Oklahoma. Due to an administrative error, the payroll office servicing Lindsey Air Station in Germany issued a paycheck to him for the period December 14 through 27, 1969. Tinker Air Force Base also paid him for this period, resulting in a gross overpayment of \$600.80. The agency discovered the error and requested Mr. Wells to repay the amount due, by memorandum dated February 18, 1970.

The request for waiver of the overpayment was denied by our Claims Division. It was noted that on November 17, 1969, in anticipation of his transfer to Oklahoma, Mr. Wells made written request to the payroll office servicing Lindsey Air Station that his checks for the periods ending November 29 and December 13, 1969, be sent to him in Oklahoma. He noted therein that his next check would be issued by Tinker Air Force Base. Nonetheless, when he was paid for the period ending December 27, 1969, by both Tinker Air Force Base and Lindsey Air Station, he made no inquiry as to the basis for the double payment. Accordingly, the Claims Division denied the request for waiver since the record did not establish lack of fault or good faith on the part of the employee.

On appeal Mr. Wells contends that he had no notice of the overpayment until the agency alerted him to it and, therefore, could not reasonably have been expected to make inquiries concerning the overpayment. He states that the checks from Lindsey Air Station for the periods ending December 13 and 27 were not sent to him in Oklahoma, but instead were credited directly to his American Express account in Weisbaden. He further states that he did not receive the American Express bank statement reflecting the overpayment until after receipt of the February 18, 1970, memorandum from the agency notifying him of the error, and he had no other previous notice of the overpayment.

B-188492

The statement of Mr. Wells on appeal is inconsistent with statements made by him at the time the overpayment occurred. On appeal he states that the paychecks from Lindsey Air Station for the periods ending December 13 and 27 were credited to his American Express account in Weisbaden, Germany. However, on December 31, 1969, he wrote the Lindsey Air Station payroll office and acknowledged receipt in Oklahoma of the paycheck for the period ending December 13, 1969. In view of these inconsistent statements, the record does not support Mr. Wells' assertion that he had no knowledge of the overpayment at the time it occurred.


Moreover, even assuming Mr. Wells had no knowledge of the overpayment at the time it occurred, waiver is not warranted in the circumstances of this case. The waiver provisions of 5 U.S.C. 5584 (Supp. IV, 1974), as implemented by Parts 91-93 of title 4 Code of Federal Regulations (1977), are essentially equitable in nature, and waiver may not be granted unless the claimant demonstrates that collection would be against equity and good conscience, and not in the best interests of the United States. With respect to the standards that are to be applied in making that determination, 4 C.F.R. 91.5(c) provides:

"(c) Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case."

B-188492

While lack of knowledge of the overpayment may tend to demonstrate the good faith of the employee, it is not the sole determinant of whether waiver is appropriate. As in Mr. Wells' case where lack of knowledge of an overpayment is due to the fact that the error was discovered by the agency and brought to the employee's attention so promptly that he had not at that point received his leave and earning statements or his bank statement, a perusal of which would have put him on notice of the error, we do not believe it to be against equity and good conscience to require the refund of amounts improperly paid. In such case, the employee has no reasonable basis to have relied upon receipt of the erroneous payment. These situations are to be distinguished from cases in which the employee is unable to examine leave and earnings or bank statements for an extended period due to the fact that he is in a prolonged travel status. Compare B-172073, August 5, 1971, and B-175449, July 27, 1972.

In view of the above, the denial of Mr. Wells' request for waiver by our Claims Division's letter of September 10, 1971, is sustained. We have been administratively advised that adjustments have already been made for Government contributions and deductions, and that an error regarding credit for temporary lodging allowance has been corrected. Accordingly, if the net amount of \$410.54 is otherwise proper, collection should be made of this amount.


Deputy Comptroller General
of the United States