

DOCUMENT RESUME

02592 - [A1792802]

[Request for Waiver of Overpayment of Pay]. B-188803. June 15, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Marvin L. Peek; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 5 U.S.C. 5584 (Supp. IV). 4 C.F.R. 91.5. B-185458 (1976). B-167804 (1976).

Employee requested reconsideration of the partial denial of a request for waiver of the erroneous payment of pay. The employee's acceptance of erroneous overpayments after notification of the error in his promotion precluded any waiver of his indebtedness. The employee remained indebted to the United States for \$728. The partial waiver was affirmed. (QM)

Peter Iannicelli  
Civ. Pers.

02582  
2802  
**DECISION**



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

FILE: B-188803

DATE: June 15, 1977

MATTER OF: Marvin L. Peek - request for waiver of overpayment  
of pay

DIGEST: Army transferred GS-11, step 1, employee to South Vietnam with intention to promote him to GS-12, but promotion request was not processed because of evacuation and employee was appointed as GS-11, step 7, in United States. Employee was notified on November 28, 1975, that he was only entitled to compensation at GS-11, step 2, rate since he had not been promoted but was entitled to step increase. Acceptance of erroneous overpayments at GS-11, step 7, rate of compensation after notification of error precludes waiver of indebtedness under 5 U.S.C. § 5584 (Supp. IV, 1974).

This action is in response to the request dated February 3, 1977, from Mr. Marvin L. Peek, a civilian employee of the United States Army Audit Agency, for reconsideration of the action of our Claims Division on December 22, 1976, which denied in part a request for waiver of erroneous payment of pay made to Mr. Peek during the period from June 26, 1975, through March 6, 1976.

The record shows that Mr. Peek, an employee of the United States Army Audit Agency, Okinawa Area Office, GS-11, step 1, was selected for a permanent change of station to the Defense Attache Office, Saigon, South Vietnam. Relative to that transfer, he was to receive a one-grade promotion and to be permitted to exercise reemployment rights upon his return from Vietnam. On March 26, 1975, Mr. Peek arrived in Saigon but left the area on April 14, 1975, due to the evacuation of Americans from South Vietnam. Mr. Peek was not promoted to GS-12 upon his arrival as he did not meet the eligibility requirements. Later, on April 7, 1975, a request for his promotion was prepared but was not processed, apparently because of the evacuation of Americans from South Vietnam. However, on June 21, 1975, Mr. Peek was advised by the United States Army Audit Agency, Atlanta, Georgia, that based on his reemployment rights he would be eligible for reemployment as a GS-11, step 7, commencing June 26, 1975. He transferred to the Atlanta office and was compensated at the GS-11, step 7 level. It was subsequently determined that Mr. Peek should have been placed at the GS-11, step 2 level as he had never been promoted to GS-12.

B-188803

By letter of November 28, 1975, Mr. Peek was notified of the error in the salary rate he was receiving. However, due to administrative delay in adjusting his pay, Mr. Peek continued to be paid at the erroneous rate until March 6, 1976, and, as a result, he was overpaid in the amount of \$1,858.24 for the period from June 26, 1975, through March 6, 1976.

Since it was the intent of the Army to promote Mr. Peek, there was confusion regarding the contemplated promotion, and the pay rate of GS-11, step 7 was roughly equivalent to that of GS-12, step 1, our Claims Division waived \$1,130.24 of the overpayments which were paid to Mr. Peek during the period from June 26, 1975, through November 29, 1975. The balance of the debt, \$728, was not waived because Mr. Peek had been notified by letter of November 28, 1975, of the erroneous nature of the payments. Mr. Peek has requested reconsideration of that portion of the December 22, 1976, action which denied waiver of \$728 of the overpayments.

The authority to waive erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584 (Supp. IV, 1974). Subsection (b) of 5 U.S.C. § 5584 prohibits exercise of waiver authority by the Comptroller General:

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim \* \* \*"


Implementing the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1976), provides, in pertinent part, for waiver of an erroneous payment whenever:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. 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. \* \* \*"

B-188803

Although there is no indication of fraud or misrepresentation on Mr. Peek's part, we have consistently held that where the employee was aware of the overpayment when it occurred, a request for waiver will be denied. Acceptance of the overpayments with knowledge of their erroneous nature constitutes "lack of good faith" and waiver is prohibited by law. See Matter of Kenneth J. Moore, B-185458, October 5, 1976; and Matter of Charles Gulliford et al., B-167804, January 23, 1976. The record indicates that Mr. Peek was notified by letter of November 28, 1975, that he was being overpaid. He knew, or should have known, that the payments received after November 28, 1975, should have been at the GS-11, step 2 level rather than at the GS-11, step 7 level he actually received. Accordingly, we cannot waive that portion of the overpayments received by Mr. Peek after November 28, 1975.

In view of the above discussion, the Claims Division action of December 22, 1975, granting only a partial waiver of the erroneous overpayment of pay and holding Mr. Peek to be indebted to the United States for \$728 is affirmed.

  
Acting Comptroller General  
of the United States

Peter Iannicelli  
Civ. Pers.

JUN 15 1977

Director, Claims Division

Acting Comptroller General <sup>A.F.</sup> KELLER

Waiver of overpayments of pay - Marvin L. Peck -  
B-188803-O.M.

Returned herewith is File Z-1166178 forwarded for our consideration on April 7, 1977, along with our decision B-188803, dated today, affirming your action of December 21, 1976, concerning the request by Marvin L. Peck for waiver of overpayments of pay to him.

Attachments

dyb