

DECISION

11472 PLM II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-195647

DATE: September 21, 1979

MATTER OF: Richard W. Jackson

DIGEST: An employee received an erroneous payment of foreign quarters allowance through administrative error which was reflected on his biweekly earnings and leave statements. The debt may not be waived since he knew or should have known from the substantial increase in pay and from an examination of his earnings and leave statement that an error had been made. Such actual or presumptive knowledge on the employee's part carries with it an obligation to bring the matter to the attention of the appropriate official and to return the excess sum or set it aside for refund at such time as the accounting error was corrected.

The issue presented in this case upon an appeal of our Claims Division's denial of a [request for waiver ~~is whether waiver~~ of an erroneous payment of foreign quarters allowance] may be granted under 5 U.S.C. 5584 (1976) in the circumstances described. The answer is no since we find that the recipient of the overpayment should have known or with reasonable diligence could have observed from an examination of his earnings and leave statements that he had been paid an allowance for which he was not entitled and should have been prepared to refund the amount erroneously paid.

Mr. Richard W. Jackson, an overseas employee of the United States Army Medical Department Activity, Nurnberg, Germany, began his employment on May 21, 1973. He has acknowledged that he was not eligible for foreign quarters allowance. However, for the pay period ending November 3, 1973, through the pay period ending October 2, 1976, he received a foreign quarters housing allowance. The total amount paid was \$5,538.12. The payments occurred every 2 weeks, except for the two pay periods in the month of July 1974, in the amount of \$74.94 from November 3, 1973, through January 10, 1976, and in the amount of \$72.66 every 2 weeks from January 24, 1976, through October 2, 1976. The overpayments were not reported by Mr. Jackson until sometime in November 1976 and he was officially notified of the overpayments and the extent of the debt by letter dated November 23, 1976. Mr. Jackson claims that

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he was not aware of the overpayments since at the beginning of his employment there was some administrative tangle and he did not receive pay for the first month. There also appears to have been some fluctuation in his pay at the beginning of his employment and his pay was not stabilized until August 1973. Further, it is claimed that since his checks were deposited automatically in a bank and the lack of a code on his leave and earnings statement for the foreign quarters allowance, he was unaware of the erroneous payment.

Section 5584 of title 5, United States Code (1976), authorizes the Comptroller General to waive certain claims—

"* * * the collection of which would be against equity and good conscience and not in the best interests of the United States * * *"

However, the law also provides that the Comptroller General may not exercise that waiver authority—

"if, in his opinion, there exists, in connection with the claim, an indication of * * * fault, or lack of good faith on the part of the employee * * *"

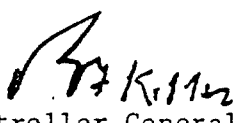
Fault exists if in light of all the facts it is administratively determined that the employee should have known that an error existed and should have taken action to have it corrected. The standard is whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements. B-165663, June 11, 1969.

It is not unusual for employees of the Government to have their biweekly pay forwarded directly to their bank. However, each employee receives and has an obligation to examine the biweekly leave and earnings statement to determine its correctness, B-184480, May 20, 1976. Mr. Jackson apparently did not do this. The amount of overpayment for each 2-week period was almost \$75 and with reasonable diligence should have been observed by Mr. Jackson. Although there was no specific code on the leave and earnings statement designated as a foreign

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quarters allowance, it does show a nontaxable item of a substantial amount which, upon examination and inquiry, would have revealed the erroneous payment. Therefore, we cannot conclude that he was not without fault in the matter for not examining his leave and earnings statement and reporting the indicated overpayment. B-171891, March 23, 1971. The fact that Mr. Jackson may have suffered a financial hardship in repayment of the amount due to the Government is not sufficient to authorize waiver. B-195252, July 19, 1979.

Accordingly, the action taken by our Claims Division denying waiver is sustained.


Deputy Comptroller General
of the United States