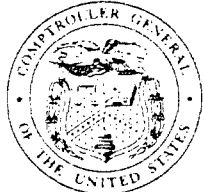


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DECISION



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

FILE: B-198933 *[Request for]* DATE: September 30, 1980

MATTER OF: Nevel T. Gladd--Waiver of overpayment
of compensation]

DIGEST: Employee appeals Claims Division denial of his request for waiver of a \$1,073.34 overpayment resulting from an error on his SF-50 setting his salary at GS-13, step 9, \$29,018 per annum. Waiver was denied by Claims Division since job offer letter advised him that salary was "GS-13, \$22,906 per annum." Denial of waiver by Claims Division is sustained. Employee was not free from fault since he had at least constructive notice of overpayment by virtue of \$6,000 discrepancy between salary listed in job offer letter and that established on SF-50.

Mr. Nevel T. Gladd appeals the Claims Division (now Claims Group) denial of his request for waiver of an overpayment of compensation in the amount of \$1,073.34.

Mr. Gladd was offered an intermittent appointment as a special Government employee with the Naval Research Laboratory, Washington, D.C., by letter of July 7, 1976. The letter offered him an--

"excepted appointment, Intermittent, not-to exceed 130 days as a Research Physicist, GS-13, \$22,906 per annum * * *."

Subsequently, on July 23, 1976, a Notification of Personnel Action, SF-50, was issued showing Mr. Gladd's grade and rate as GS-13, step 9, with a per annum salary of \$29,018.7. His pay was established based on the erroneous SF-50 and until the error was discovered in September 1977, he was overpaid on his biweekly paycheck in amounts ranging from \$13.99 to \$77.75.

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Mr. Gladd submitted a request for waiver of the overpayment to our Claims Division. In his request for waiver, he stated that he was not aware of the overpayment until it was brought to his attention by the agency. He believes that his lack of knowledge of the overpayment was reasonable in view of his intermittent employment, resulting in pay checks for irregular amounts, and the fact that the leave and earnings statements he received did not show his grade, step, or annual salary. Additionally, as an indication of his good faith, he states that the SF-50, dated July 23, 1976, contained other errors, which he brought to the attention of the appropriate officials.

The Claims Division denied Mr. Gladd's request for waiver since he had been advised by the July 7, 1976, letter that his per annum salary would be \$22,906, and that when he received the SF-50 showing a per annum salary of \$29,018, he should have noticed the discrepancy of over \$6,000 and brought it to the attention of agency officials.

Mr. Gladd has appealed that decision and, in addition to reiterating the points made in his original request for waiver, he has submitted additional arguments. Specifically, he cites two decisions of this Office which he believes supports his request for waiver.

In the first decision Robert L. Zerr, B-184182, July 22, 1976, an employee was overpaid when his grade and rate was erroneously set at GS-12, step 7, instead of GS-13, step 1, upon his appointment with the Federal Energy Administration. We found that the employee had no way of knowing that he was being overpaid, and the overpayment was waived.

That decision is easily distinguishable from Mr. Gladd's situation, since the employee in that case had never been notified that his pay would be established at any other figure. In Mr. Gladd's case, he was advised by the July 7, 1976, letter that his pay would be set at \$22,906.

The second decision Mr. Gladd refers to is Julius C. Steel, B-182188, January 22, 1975. In that case, an overpayment due to an employee's salary being set one step higher than that to which he was entitled was waived based partially on the fact that the employee's leave and earnings statements did not show the applicable grade and step. Mr. Gladd notes that his leave and earnings statement did not show his grade or step, nor his annual salary. While we agree that the leave and earnings statements would not have put Mr. Gladd on notice of the overpayment, we are of the opinion that waiver should not be granted.

Waiver of overpayments of pay or allowances is authorized by 5 U.S.C. § 5584 (1976), where there exists no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. See 5 U.S.C. § 5584(b)(1) and 4 C.F.R. § 91.5(c)(1980). In applying the statutory requirement that the employee be free from fault, we have held that if it is determined that a reasonable man, under the circumstances would have made inquiry as to the correctness of payment but the employee involved did not, then the employee was not free from fault, and waiver is precluded. B-165663, June 11, 1969.

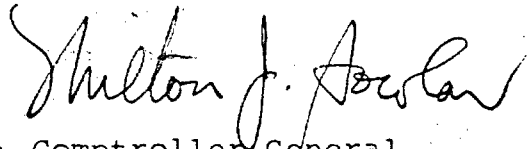
Furthermore, this Office has applied a constructive notice theory in considering requests for waiver. Thus, where an employee has the necessary records which, if reviewed, would indicate overpayment, and the employee fails to review the accuracy of those records or otherwise fails to take corrective action, he is not without fault. Arthur Weiner, B-184480, May 20, 1976.

We believe that a discrepancy in annual salary of over \$6,000 between that listed in the offer of employment and that contained in the SF-50 should have raised questions concerning the correct rate. For this reason we believe that Mr. Gladd had at least constructive notice if not actual notice of the overpayment upon receipt of the SF-50 dated July 23, 1976. Therefore, waiver of any overpayment occurring after receipt of that SF-50 is precluded.

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Thus, the fact that the leave and earnings statements did not provide constructive notice is not relevant since we find that Mr. Gladd had already received at least constructive notice.

Accordingly, for the reasons stated above, we affirm the Claims Division's denial of Mr. Gladd's request for waiver.)

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States