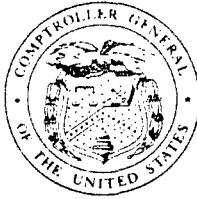


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**DECISION**



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

FILE: B-200296

DATE: November 28, 1980

MATTER OF: Harry A. Phillips - [Request for waiver  
of overpayment of pay]

**DIGEST:** An employee was hired at GS-7, step 1. Within 1 week he was erroneously advanced to step 10 of the same grade. The employee did not question the advance until several months later when he was "comparing pay slips" with another employee with a comparable background who had been hired at the same time he had been hired. Since the employee failed to question an unexplained increase in pay, he is not without fault and, under applicable regulations, waiver is precluded. Financial hardship cannot form the basis for waiver that is otherwise barred.

We have been asked to waive repayment of the erroneous overpayments of pay received by an employee when he was improperly advanced from grade GS-7, step 1, to grade GS-7, step 10. For the reasons set forth below, we decline to waive repayment.

By letter of July 26, 1977, Mr. Harry A. Phillips was offered a position as an Air Traffic Control Specialist, with the Federal Aviation Administration (FAA), grade GS-7, at an annual salary of \$11,523. He entered into duty on August 8, 1977. The Standard Form 50, Notification of Personnel Action (SF-50), prepared at that time, appointed him at grade GS-7, step 1, at the salary set out above. Approximately 1 week later Mr. Phillips received another SF-50 changing his appointment to grade 7, step 10, at an annual salary of \$14,979. Mr. Phillips, in his request for waiver, stated that he considered the change to be based upon a recognition of his prior experience as an air traffic controller, and did not question his pay in any way at that time.

Several months later Mr. Phillips was "comparing pay slips" with another controller with a comparable background who had been hired at about the same time he had

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B-200296

been hired. He discovered that he was receiving a higher salary than his co-worker, and brought the matter to the attention of his superiors. The change to step 10 was found by the FAA to be an administrative error which had resulted in overpayments to Mr. Phillips totaling \$1,839.38. The error was corrected effective January 28, 1978. Mr. Phillips requested waiver of the overpayment and the FAA recommended that waiver be granted. By letter of June 10, 1980, our Claims Group denied waiver on the grounds that Mr. Phillips failed to question the change in step, which constituted partial fault, barring waiver. By letter of August 21, 1980, Mr. Phillips requested reconsideration on the same grounds as he requested waiver, and detailed the financial hardship he would suffer if waiver is not granted.

The authority to relieve employees of liability for erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584 (1976). Subsection (b) of that section 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 \* \* \*"

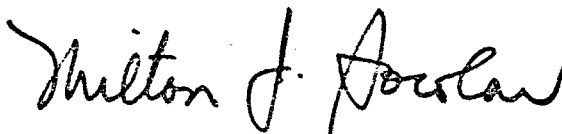
Implementing the statutory provision, section 91.5 of title 4, Code of Federal Regulations (1980), provides, in pertinent part, for waiver of an erroneous payment whenever:

"(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

B-200296

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 \* \* \*."

Although Mr. Phillips never received a paycheck at the grade GS-7, step 1 level, he was advised that he had been hired at that level, and he was then advanced to step 10 without explanation. He did not question that advancement. Thus, we believe that the above-quoted portion of the regulations controls and waiver is precluded. Additionally, although Mr. Phillips states that great financial hardship would occur if waiver is not granted, we have held that financial hardship is not a basis for waiver when other circumstances preclude such action. Matter of James T. Harrod, B-195889, February 14, 1980. Accordingly, the action of our Claims Group is sustained.



For the Comptroller General  
of the United States