

**DECISION**

*P.M. I 74150*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-207742**DATE:** January 31, 1983**MATTER OF:** Peggy J. Potts - Waiver of Erroneous  
Overpayment of Pay**DIGEST:**

Employee was promoted from grade GS-6, step 2, to grade GS-7, but promotion was erroneously based on rate of GS-6, step 4. Erroneous overpayment may be waived where there is no indication employee knew or should have known of error. There is no evidence that employee received pay or personnel records which would have revealed error.

The issue in this decision is whether an overpayment of pay resulting from an error in a promotion action may be waived. We hold that under the circumstances the overpayment may be waived where it has not been shown that the employee knew or should have known of the error and erroneous overpayment.

This decision is in response to an appeal by Peggy J. Potts, an employee of the Department of the Army, of our Claims Group determination dated December 10, 1981, denying her claim for waiver of an erroneous overpayment of pay.

Mrs. Potts was employed by the Army as a secretary, grade GS-6, step 2, when she resigned effective March 16, 1978. For reasons which are not clear from the record before us, the Army credited Mrs. Potts with periodic step increases on April 30, 1978, and April 29, 1979, and did not issue a Standard Form (SF) 50 acknowledging the resignation until August 8, 1979. This SF-50 listed her grade and step as grade GS-6, step 4.

On November 4, 1979, Mrs. Potts was reemployed by the Army on a temporary appointment. Although the initial SF-50 issued November 2, 1979, indicated that Mrs. Potts was hired at grade GS-6, step 4, based on her previous employment at that grade and step, another SF-50 was processed that day correcting that information to grade

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GS-6, step 2. Again in February 1980, when Mrs. Potts' temporary appointment was converted to Reinstatement-Career Conditional, the Army issued a SF-50 listing her grade and step as grade GS-6, step 4, and then issued a corrected SF-50 listing it as grade GS-6, step 2. Finally, in April 1980, Mrs. Potts received a promotion to grade GS-7, and again the Army assumed that her grade and step was grade GS-6, step 4, instead of grade GS-6, step 2. Therefore, the Army promoted Mrs. Potts to grade GS-7, step 3, instead of step 1, and she was erroneously overpaid \$712.18, until the error was corrected in January 1981. The error was discovered in December 1980 when Mrs. Potts inquired about an increase in her annual leave accrual since she had more than 3 years of Government service.

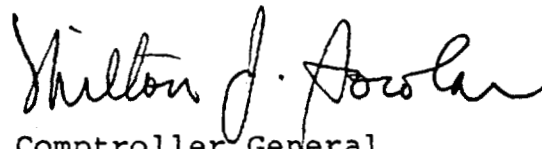
The Army requested waiver on the grounds that the employee was unaware of the overpayment and the overpayment was due to administrative error by the personnel office in failing to verify prior records. However, our Claims Group denied waiver on the basis that Mrs. Potts received copies of the SF-50's issued in November 1979, and February 1980, which showed her grade and step as grade GS-6, step 2. Therefore, when she was promoted in April 1980, from grade GS-6, step 4, she had reason to question the accuracy of this SF-50, and by failing to do so she was at least partially at fault.

Under the authority of 5 U.S.C. § 5584 (1976), an erroneous overpayment of pay or allowances may be waived if collection would be against equity and good conscience and not in the best interests of the United States and if there is no 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 the waiver. In the absence of any indication of fraud, misrepresentation, or lack of good faith, the determination of waiver turns on whether the employee is partially at fault since he knew or should have known of the error and thus should have inquired as to the correctness of the payment.

It appears that Mrs. Potts was never paid at the salary rate for grade GS-6, step 4, only that her promotion was based on that rate. Our decisions have held that employees generally are expected to be aware of the waiting periods between step increases and to make an inquiry about an increase not in accord with those waiting periods. Herbert H. Frye, B-195472, February 1, 1980; and L. Mitchell Dick, B-192283, November 15, 1978. However, we have not imputed to employees the knowledge that the rate upon promotion must exceed the current rate by at least two step increases and any increase beyond that rate should be questioned.

Moreover, there is no evidence in the record before us that Mrs. Potts received copies of her SF-50's which showed her correct grade and step. Furthermore, there is no evidence that Mrs. Potts received leave and earnings statements which might have placed her on notice of her correct step in grade 6.

Accordingly, we waive Mrs. Potts' indebtedness to the United States. If any or all of the overpayment has been collected from her based on our Claims Group determination, the Army should refund such amounts to Mrs. Potts, upon proper application.

for   
Comptroller General  
of the United States