



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hawley E. Thomas - Salary Overpayments - Waiver
File: B-227322
Date: September 19, 1988

DIGEST

Waiver must be denied when an employee was aware that he was being overpaid after an erroneous within-grade step increase. Although the employee immediately notified the agency and although long administrative delays resulted before correction of the overpayment occurred, we have consistently held that when an employee is aware of an error the employee cannot reasonably expect to retain the overpayment.

DECISION

This action is in response to an appeal by Mr. Hawley E. Thomas of our Claims Group settlement^{1/} denying his request for waiver of overpayments caused by an erroneous within-grade step increase. For the reasons indicated below, we hold that the employee may not be granted waiver of the overpayments.

BACKGROUND

In April 1980, Mr. Thomas, who was a grade GS-12, step 6 employee in the Department of the Interior's Bureau of Land Management, was erroneously granted a within-grade step increase one full year in advance of the required time-in-grade to achieve a step 7. The employee was aware of the error almost immediately and informed a personnel clerk and his supervisor of the mistake. But, because of long administrative delays, Mr. Thomas continued to receive overpayments from April 20, 1980, through July 10, 1982, when the erroneous within-grade increase was finally corrected. As a result, the employee was overpaid \$2,046.53.

^{1/} Z-2794910, Sept. 13, 1985.

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The facts and the argument presented by the employee in his appeal are the same as those he presented in his original application for waiver. He argues that, because of the administrative delay involved in correcting the erroneous within-grade step increase, he should be granted a complete waiver under section 5584 of title 5, United States Code. That statute provides the authority for waiving collection of erroneous payments of pay and allowances if collection of the claim would be against equity and good conscience and not in the best interests of the United States.

RULING

We do not find the employee's argument compelling. Although it is unfortunate that so much time passed before the error was corrected, administrative delay and inefficiency are not grounds for granting waiver, especially when the employee is fully aware of the error and resulting overpayments.

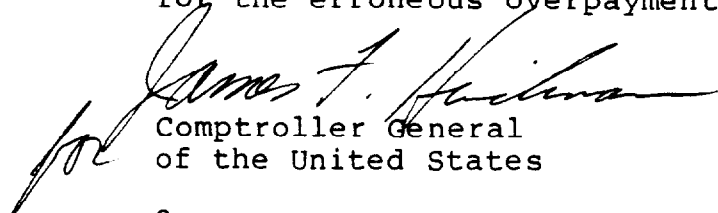
We have consistently held that when an employee is aware of erroneous overpayment, he or she should be prepared to make provision for repayment:

"under the waiver statute, 5 U.S.C. § 5584 . . . if an employee is cognizant of an error, even though he may inform the employing agency of the error, in the absence of official notice that the payments were not in error, the employee cannot reasonably expect to retain the overpayment."
Erik Brett Sager, B-218981, Oct. 7, 1986.

In such circumstances, collection of the overpayment is not considered to be against equity, good conscience, or the best interests of the United States. Judith E. Brinker, B-228669, Mar. 4, 1988.

In the present case, Mr. Thomas was aware of the error and notified officials of the mistake. Even though the overpayments were not corrected administratively until July 10, 1982, the employee did not receive official notice that the payments were not in error, and thus cannot reasonably expect to retain the overpayment.

Accordingly, we sustain our Claims Group's denial of waiver for the erroneous overpayment.


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