



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Judith E. Brinker - Salary Overpayments - Waiver  
**File:** B-228669  
**Date:** March 4, 1988

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### DIGEST

After an employee was officially notified that she had been overpaid because her pay had been set at an incorrect step of her grade in connection with her promotions, waiver of the erroneous payments must be denied. Under 5 U.S.C. § 5584 waiver of the erroneous payments would not be in accordance with equity and good conscience and in the best interest of the United States because the overpayments at issue were made after she had been notified of the incorrect salary rates. She, therefore, could not have expected to retain the overpayments, and should have made provision for their repayment.

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### DECISION

Ms. Judith E. Brinker, a civilian employee of the Navy, may not be granted waiver of collection of erroneous payments of pay for the period of erroneous payments that accrued after she learned of the error causing the overpayment.

In September 1983, Ms. Brinker was promoted to grade level GS-5. Her pay should have been at step 8 with a salary of \$16,491 annually; however, it was established erroneously at step 10 in the amount of \$17,383 annually. Subsequently, she was promoted to grade level GS-7 and her pay was based erroneously at step 5, rather than step 4. On February 25, 1986, she was notified of the errors. The computation of the total overpaid salary retroactive to September 4, 1983, was complicated and required considerable research. As a result she was not informed of the amount of the indebtedness until September 17, 1986. In March 1986 her biweekly salary was reduced by one step to the proper amount for one pay period only. Thereafter, her pay reverted to the erroneous rate and she was overpaid several additional pay

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periods. She states that she was unaware that the reduction in March 1986 was only temporary. Nonetheless, we assume that she received biweekly leave and earning statements informing her of the March reduction and the subsequent increases. The final computation of the erroneous payments was completed on September 17, 1986, and she was informed that the total overpayment between September 4, 1983, and August 12, 1986, was \$2,188.88. Of this amount, \$311.99 accrued after she received the February 25, 1986, notices of personnel action correcting her annual salary rates retroactive to September 4, 1983.

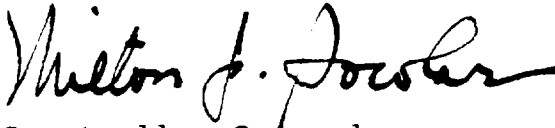
The Navy recommended to our Claims Group that collection action against Ms. Brinker for \$1,876.89 of the overpayment be waived under the Comptroller General's waiver authority in 5 U.S.C. § 5584. It recommended that waiver be denied for the balance of \$311.99, since that is the portion accruing after the notice of the personnel actions advising her of the error. The Claims Group followed the Navy's recommendations and waived only \$1,876.89. Ms. Brinker appealed the action denying waiver of \$311.99 on the basis that she was not informed that the salary reduction for one pay period in March 1986 was to be temporary and she had attempted to resolve the problem by repeatedly asking the civilian personnel office to look into the matter.

Under the authority of 5 U.S.C. § 5584, this Office may waive erroneous payments if collection action "would be against equity and good conscience and not in the best interests of the United States." Waiver must be denied if the employee is partly at fault for the overpayment or if termination of collection action would otherwise be contrary to equitable principles. We have consistently held that when an employee is aware of an overpayment, knowing it to be erroneous, he or she cannot reasonably expect to retain it and should make provision for its repayment. In these circumstances, collection of the overpayment is not considered to be against equity, good conscience, or in the best interest of the United States.

Ms. Brinker should have been aware that she was being overpaid for pay periods after February 25, 1986, when she received official notice of the incorrect pay rates she had received since September 4, 1983. She knew that her salary should have been reduced, but the reduction was for only one pay period after which her pay was again increased resulting in the \$311.99 overpayment accruing subsequent to the notices of erroneous pay rates. Consequently, waiver of this amount is not justified. It is immaterial that she did not know the exact amount

of the accrued overpayment until the payroll office completed its computation. See John J. Short, B-212402, Dec. 14, 1983.

Accordingly, we sustain our Claims Group's denial of waiver for the overpayment of \$311.99.

*for*   
Comptroller General  
of the United States