

McCann
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dolores Gutowsky - Waiver of Overpayment of Pay -
Incorrect Step

File: B-238580

Date: May 10, 1991

DIGEST

Where the record has not clearly established that an employee knew or should have known that her assignment to a higher step within grade GS-6 upon being returned from a temporary promotion at grade GS-7 to her former grade position was incorrect, and she could not reasonably be expected to know and understand the complexities of federal personnel regulations governing the establishment of pay rates and step advancements, we grant waiver of the overpayments due to the administrative errors involved.

DECISION

Ms. Dolores Gutowsky, formerly an employee of the Internal Revenue Service (IRS), Department of the Treasury, Atlanta, Georgia, appeals our Claims Group's denial of her request for waiver of overpayments of \$1,093.99, which arose during her employment.^{1/} For the following reasons, we grant her request.

The facts reported by the IRS are not in dispute. Briefly stated, the facts show that Ms. Gutowsky, who was employed by the IRS in grade GS-6, step 4, received a short-term temporary promotion to grade GS-7, effective August 16, 1987. Since she was entitled to not less than two step-increases of the grade from which promoted,^{2/} her compensation was properly set at step 3 of grade GS-7. On November 8, 1987, she was returned to her former grade GS-6 position. While Ms. Gutowsky's compensation should have been reset at grade GS-6, step 4 (the rate she would have been receiving had she not been temporarily promoted), her compensation rate was improperly set at GS-6, step 7. This was the basic administrative error the IRS

^{1/} Settlement Certificate No. Z-2900359, May 19, 1989.

^{2/} 5 U.S.C. § 5334(b) (1988).

made in this case, having improperly applied its own internal regulations.^{3/}

On January 31, 1988, she was again temporarily repromoted to the grade GS-7 position she previously held and again became entitled to increased pay under 5 U.S.C. § 5334(b). However, the two step-increases authorized were applied to the improper compensation base of grade GS-6, step 7. Thus, the administrative error made on November 8, 1987, was compounded, and her compensation was erroneously set at GS-7, step 6, when it should have been reset at GS-7, step 3. The error was not discovered and corrected until after she was again returned to her former grade GS-6 position, effective April 24, 1988. The gross amount of the overpayments involved is \$1,093.99.

Waiver of claims for overpayment of compensation may be granted under 5 U.S.C. § 5584 (1988), when collection would be against equity and good conscience and not in the best interests of the United States, unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the employee's part. The issue in this case is whether Ms. Gutowsky can be said to be at "fault" in this matter as that term is used in the statute. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving a payment to which he was not entitled. George R. Beecher, B-192485, Nov. 17, 1978. See also Dominick A. Galante, B-198570, Nov. 19, 1980. Where an employe has been assigned to the wrong step within a grade upon promotion or the assumption of a new position, we have often waived any resulting overpayments. James S. Vinson, Jr., B-211345, July 21, 1983, and cases cited therein. In such cases we have granted waiver in the belief that these employees could not be found to be at fault where the record has not clearly established that the employee knew, or should have known, that the rate of pay received in their new position was in excess of their entitlement, and they could not reasonably be expected to know and understand the complexities of federal personnel regulations governing the establishment of pay rates and step advancement.

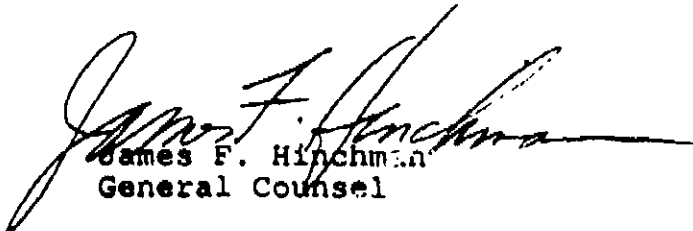
In the present case, the record indicates that Ms. Gutowsky had been in frequent contact with her personnel office since July 1986, when due to an administrative error her step increase from GS-6, step 3, to GS-6, step 4, was not processed on time. When this error is combined with other personnel errors made, it caused considerable confusion on her part as well as that of the personnel office as to her entitlements.

3/ Under IRS regulations, a temporary promotion must be held 1 year before it may be used for the purpose of the highest previous rate rule. See also 5 C.F.R. § 531.203 (1990).

In this regard, the record contains an admission by an IRS official that the major contributing factor to Ms. Gutowsky's problem was that the personnel specialists involved were not knowledgeable concerning the law and governing regulations, but he notes that appropriate steps have been taken to correct that situation.

As shown above, there were a number of personnel actions taken within a short period of time perpetuating the administrative error made when Ms. Gutowsky was returned to her grade GS-6 position in November 1987. In these circumstances, we believe that she could not reasonably be expected to know and understand the complexities of the federal personnel regulations involved here, especially when even the IRS personnel specialists themselves were confused. Therefore, we conclude that she was not at fault in the matter. James S. Vinson, B-211345, supra.

Accordingly, pursuant to 5 U.S.C. § 5584 (1988), we hereby grant waiver of the overpayments to Ms. Gutowsky in the gross amount of \$1,093.99.


James F. Hinchman
General Counsel