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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Richard A. Young

File: B-246653

Date: May 8, 1992

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### DIGEST

Employee, who was entitled to indefinite pay retention, should have been paid only 50 percent of the 1990 annual pay comparability increase. The agency erroneously paid the claimant the full 100 percent comparability increase for approximately 8 months, resulting in an overpayment of salary. Employee's request for waiver of debt arising from overpayment is denied since facts and circumstances show that he should have been aware of the error and collection of debt is not against equity and good conscience.

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### DECISION

This decision is in response to an appeal by Mr. Richard A. Young, an employee of the United States Department of Housing and Urban Development (HUD), of the settlement action by our Claims Group which denied his claim for waiver of an overpayment of salary.<sup>1</sup>

As the result of a desk audit of his position by HUD's Employment and Classification Division in September 1987, Mr. Young's position as a Supervisory Compliance Specialist, GM-0301-14, was reclassified to Supervisory Compliance Analyst at the GS-1801-12 grade level. He received a memorandum dated November 16, 1987, which stated that he would retain his then current grade and pay for a period of 2 years from December 20, 1987, and that "[o]nce your grade retention terminates, you will be entitled to indefinite pay retention."<sup>2</sup>

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<sup>1</sup>Settlement Certificate Z-2915239, Aug. 30, 1991.

<sup>2</sup>Under 5 U.S.C. 5363(a) (1988), an employee entitled to pay retention receives his retained rate of pay and increases limited to 50 percent of the increase payable for the employee's current position until the retained rate becomes equal to or less than the rate of the current position.

In January 1988, Mr. Young received a Standard Form (SF) 50 dated January 16, 1988, with an effective date of December 20, 1987, changing his position from GM-14 to GS-12 and stating that he was entitled to grade retention through December 19, 1989.

Due to administrative error, Mr. Young's retention of grade was not terminated until September 1990 when the error was discovered. Thus, Mr. Young's pay comparability increase in January 1990 was erroneously computed under grade retention rights at the GM-14 grade level rather than under pay retention rights and he was overpaid from January 14 to September 8, 1990, in the total amount of \$756.

HUD denied waiver, and our Claims Group sustained this action on the basis that Mr. Young had been notified that he was only entitled to retain the grade of GM-14 through December 19, 1989. The Claims Group concluded that, since Mr. Young did not question the accuracy of his pay when his grade retention was terminated, he was partially at fault in the matter, which precluded waiver of his claim.

In his letter of appeal, Mr. Young states that although he received a SF-50 in January 1988, from that point on he received no other documentation until September 1990. He contends that, since he was on indefinite pay retention, he did not question the receipt of 100 percent of the 1990 pay comparability increase. He says that he was never given information, either verbally or in writing, relating to the "50% rule."

The Director, Office of Management (Director), HUD, supports Mr. Young's appeal. She states that the average employee cannot possibly be expected to know or to understand all of the complicated personnel rules and regulations relating to reclassification actions when, in fact, personnel specialists do not know or understand them. She says that Mr. Young has no personnel background, and she requests that we reverse the denial of waiver in favor of Mr. Young.

Under the provisions of 5 U.S.C. § 5584 (1988), the Comptroller General may waive, in whole or in part, a claim arising out of an erroneous payment of pay to an employee when the collection thereof would be against equity and good conscience and not in the best interests of the United States. The implementing regulations are contained in 4 C.F.R. Parts 91-93 (1992). Section 91.5(c) of those regulations provides that the previously stated criteria are generally met by a finding that the erroneous payment of pay occurred through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of Mr. Young, our determination is based upon whether he was at fault in accepting the erroneous payments. We consider "fault" to exist if, in light of all the circumstances, it is determined that the individual concerned knew or should have known that an error existed, but failed to take action to have it corrected.<sup>3</sup> In making this determination, we ask whether a reasonable person in the employee's position should have been aware that he was receiving payment in excess of his proper entitlements.<sup>4</sup>

Mr. Young was clearly advised by HUD that upon termination of his grade retention status on December 19, 1989, he would then become entitled to indefinite pay retention. Although the "mechanics" of pay retention were not explained to him, this does not excuse his failure to find out. To do so, it was not necessary for Mr. Young to become familiar with all the rules and regulations relating to reclassification, only those rules which pertained to his pay status. In our opinion, an employee in Mr. Young's grade and position, even in the absence of any background in personnel matters, should be expected to know about his pay entitlements.

As stated above, the waiver statute was enacted to relieve an employee of his obligation to reimburse the government when the facts and circumstances of the case show that the employee could not reasonably have been aware of the error and when collection would be against equity and good conscience and contrary to the best interests of the government. The standards for waiver are not met in this case. Accordingly, we deny Mr. Young's appeal of our Claims Group settlement.

  
James F. Hinchman  
General Counsel

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<sup>3</sup>See 4 C.F.R. § 91.5 (1992) and Frederick D. Crawford, 62 Comp. Gen. 608 (1983).

<sup>4</sup>See Crawford, supra.