



Office of the General Counsel

B-255551

February 14, 1994

Dear Ms. :

This responds to your letter of September 20, 1993, requesting reconsideration of Claims Group settlement Z-2918616, July 27, 1993, denying in part your request for waiver of the debt owed by you to your employing agency, the Department of State, for erroneous pay you received when the agency mistakenly paid you at a special rate of pay not applicable to your position. We affirm the Claims Group's action.

The record shows the overpayment occurred after the agency reassigned you effective June 19, 1991, from the position of Secretarial Assistant (Typing) to Accounting Technician. A special rate of pay under 5 U.S.C. § 5303 (1988) had been approved for the former position, but not the latter one. The agency did not correct the error until August 22, 1992, resulting in a total overpayment of \$1,695.80 to you during the period.

The agency and our Claims Group accepted your argument that you were unaware of the error when it began and that you did not receive a Notification of Personnel Action (SF-50) stating that you were not entitled to the special pay rate until about 6 months after your appointment to the new position. Consequently, the Claims Group granted a partial waiver covering the amount of your debt which accrued during the period June 16, 1991, through January 11, 1992, leaving a balance of \$821.76.

You base your request for reconsideration on the assertion that the agency could have applied the "highest rate of pay" rule to your salary as an Accounting Technician, thereby entitling you to keep the special rate of pay you had been earning as a Secretarial Assistant (Typing).

We do not disagree that an employee's special rate of pay may be considered in a determination of an employee's highest rate of pay. However, this authority is discretion-

ary with the agency, and may only be used when a written determination is made that the need for the services of the employee and his or her contribution will be greater in the position to which he or she is reassigned. 5 C.F.R. § 531.203(d)(2)(vi)(B). Apparently no such determination was made in your case, and, instead, as the Notification of Personnel Action indicates, the agency determined that the special rate would not apply to your new position. We have no authority to reverse that determination, which was a matter within the agency's discretion to determine.

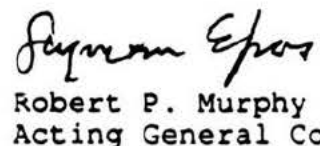
Also, while you assert that the agency later approved a special rate of pay for Accounting Technicians in late 1992, this was after the period of your overpayment, and thus would not apply in this case.

Finally, you note this error has caused you hardship. While we understand your position, hardship is not a basis for us to waive a debt that accrued after an employee received a document which, if reviewed, would have put the employee on notice of the likelihood that an error had been made.

_____, B-228661, Aug. 18, 1988.

Accordingly, upon our review of the entire record, we find no error of law or fact in the Claims Group's settlement.

Sincerely yours,


Robert P. Murphy
Acting General Counsel

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DIGEST

An agency erroneously continued to pay an employee at a special rate of pay after the employee transferred from a position for which a special rate had been approved to a position for which a special rate was not applicable. The Claims Group granted waiver for that portion of her debt that accrued before she received a Notification of Personnel Action (SF-50) stating that she was not entitled to the special rate, but denied waiver for the remaining debt. On appeal, the employee asserts that the agency should have continued her pay at her former rate based on the "highest rate of pay" rule. The agency determined that this rate would not be applied to the employee's new position. We have no authority to reverse this determination, which is a matter within the agency's discretion. A special rate of pay later was authorized for the employee's new position; however, this occurred after the period of the overpayment, and therefore, does not apply to this case. Finally, although collection of the debt may cause some hardship, hardship is not a basis for waiver.