



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-179135

August 10, 1973

Mr. Melvin W. Bright
908 Lord Rowan Road
Virginia Beach, Virginia 23462

Dear Mr. Bright:

Your letter of March 28, 1973, requests reconsideration of the action by our Transportation and Claims Division on October 12, 1972, denying your request for waiver of your indebtedness to the United States in the amount of \$894.40. That amount was erroneously paid to you for the period from August 0, 1970, through July 28, 1971, while an employee of the Norfolk Naval Shipyard, Portsmouth, Virginia.

The record indicates you were overpaid the amount of \$894.40 incident to the conversion of the Navy's 3-step system of pay to the 5-step system under the new Coordinated Federal Wage System. While you were correctly placed in WG-18, step 4, your salary was incorrectly set at \$19,905.60 per annum, the salary for step 5, rather than the step-4 salary of \$19,011.20. The denial of your request for waiver of the resulting overpayments was predicated on the belief that you ought to have made a comparison of the Form SF-50 showing your new grade, step, and salary to the pay and conversion tables published in the Shipyard paper, which comparison would have alerted you to the fact of an overpayment. Your failure to do so was regarded as an indication of a degree of fault on your part which, under the applicable standards, precluded the granting of a waiver.

Section 5564(b) of title 5 of the United States Code provides that the Comptroller General may not exercise his authority to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee * * *

Implementing that statutory provision, 4 CFR 91.5 provides:

(c) collection action under the claim would be against equity and good conscience and not in the best interests of

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the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. The facts upon which a waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of section 92.6 of this subchapter.

Thus, when an error has been made, waiver is precluded where the employee could reasonably be expected to be on notice that the payment may have been made and has not brought the matter to the attention of his administrative office. In this connection we stated the following in B-165663, June 11, 1969:

Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived.

As a basis for your request for reconsideration, you take the position that you did in fact act prudently under the circumstances. You stress the fact that the pay adjustment involved was not a routine matter, but involved a conversion to the Coordinated Federal Wage System, and

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that, having satisfied yourself that the pay you were receiving was equal to that being received by your fellow supervisors, you gave the matter no further thought, relying on the competence of the personnel division. You further state:

Like so many of the myriad of communications crossing the desks of today's government executives, only those of immediate concern are studied in detail. Others are filed for future reference. Since I was satisfied with my top of the grade pay, I probably filed the directive relative to increases on my position with no more than a glance at the title.

While we recognize that the pay conversion involved was not a routine matter, we believe that fact should have caused you to inquire more particularly as to the effect of the conversion on your pay rate, especially since you were a superintendent for 7 years and had been employed with the Government for over 41 years. In this connection the Form SF-50 which you received documenting the payroll change shows that your pay was increased from \$18,928 per annum to \$19,905.60 per annum, an increase of \$977.60 per annum. Box 30 contains the statement that "In converting your position from the Navy's 3-step rate pay system to the CPNS's 5-step rate pay plan for supervisors your position is mechanically converted to a level within your grade that is on (1) step rate higher than your existing step rate prior to conversion." Since the pay increase was substantially in excess of a 1-step increase mentioned on the Form SF-50, we believe you should have been alerted to a possible discrepancy and made inquiry as to the correctness of your pay. If you had done so the error would have been readily discovered.

In view of the above we cannot find that you were without fault in the matter. Therefore, we must affirm the determination by our Transportation and Claims Division denying your request for waiver of the \$894.40 overpayment made to you as a result of administrative error in establishing your rate of pay.

Sincerely yours,

Paul G. Deabling

For the

Comptroller General
of the United States