



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alfred H. Varga

File: B-260909

Date: December 17, 1996

DIGEST

1. The total amount of the debt due the United States on an erroneous salary payment is the gross amount, which includes both the amount the employee receives directly and other amounts disbursed on his behalf for such items as Medicare, health benefits, thrift savings plan, retirement, and federal and state tax withholdings. Nevertheless, the determination of the administrative law judge (ALJ) under 5 U.S.C. § 5514 rejecting salary offset as a means of collection for duplicate deductions other than Medicare, federal taxes, and state taxes from the employee precludes the agency from using salary offset to collect these particular deductions. As the ALJ found, the agency has admitted that it can collect these amounts by adjusting its accounts with the parties who received the erroneous withholdings. The agency is advised to promptly take that action.

2. The waiver statute, at 5 U.S.C. § 5584(a)(2)(A) (1994), limits the waiver authority of an agency head to claims "in an amount aggregating not more than \$1,500." The term "aggregate amount" is defined in 4 C.F.R. § 91.2(j) (1996) to mean "the gross amount of the claim against the employee . . ." Thus, the administrative law judge, acting for the agency head, erred in waiving \$500 of the employee's debt since the aggregate amount of the debt totals more than \$1,500.

DECISION

This decision is in response to an appeal from our Settlement Certificate Z-2927984-056, February 24, 1995, which denied the employee's request for waiver in the gross amount of his debt of \$3,548 for the overpayment of compensation for the pay period ending July 10, 1993. We sustain our settlement action, except that the duplicate deductions for retirement, health insurance, and thrift savings plan may not be collected by the agency by salary offset. The agency is advised to collect those deductions totalling \$445.31 by adjusting its accounts with the parties that received the erroneous withholdings.

BACKGROUND

The employee, Alfred H. Varga, while stationed in Detroit, Michigan in 1993, served as an administrative law judge in the Office of Hearings and Appeals (OHA), Social Security Administration (SSA), an agency that was, at that time, within the Department of Health and Human Services (DHHS). The problem arose in 1993 when the agency made duplicate salary payments to Mr. Varga for the same period.

On July 13, 1993, DHHS erroneously transferred the amount of \$2,184.57 to the employee's credit union account as salary for the pay period ending July 10, 1993. The gross earnings for this pay period were \$3,548, and the net amount of \$2,184.57 resulted after deductions for the employee's health plan, thrift savings account, federal retirement plan, Medicare, and state and federal taxes. No leave and earnings statement, however, was issued to the employee, and no explanation has been offered as to why this payment was made.

One week later, on July 20, 1993, DHHS made its regular salary payment to Mr. Varga by transferring the net amount of \$2,059.57 to the same account and issued a "Leave and Earnings Statement" showing that this amount was the net salary the employee earned for the pay period ending July 10, 1993. The gross earnings for the pay period were shown as \$3,548, and the identical deductions were made, except that an additional \$125 deduction was made for savings bonds. Mr. Varga became aware of the possible mistake on July 21, and he asked for verification of the deposits by the credit union which determined that it had received two electronic transfers credited to the employee's account on July 13 and July 20 as the employee's federal salary, both apparently for the same pay period.

The employee promptly asked the manager of the Detroit office to contact the OHA payroll staff in Falls Church, Virginia. The manager did so and, after an unexplained delay, on November 23, 1993, the OHA payroll staff forwarded documentation to DHHS to initiate recovery of the net overpayment of \$2,184.57. On January 18, 1994, the Assistant Director for Personnel and Pay Systems within DHHS issued a Certification of Salary Overpayment to advise the employee that he had received an overpayment in the gross amount of \$3,548 and that, unless he repaid that amount within 30 days, salary deductions would begin to satisfy the debt. Mr. Varga states that he did not receive this memorandum and did not become aware of it until after deductions in the amount of \$136.46 each were taken from his pay beginning on March 19, 1994, for each of four consecutive payroll periods, totalling \$545.84. He then requested a stay of collection and requested a hearing and a waiver of the debt. Since that time, no additional amounts have been collected.

The employee's request for a hearing was granted under the Debt Collection Act, 5 U.S.C. § 5514, which provides an opportunity for a hearing before salary offset

may be taken against a federal employee. On November 8, 1994, an administrative law judge (ALJ) within the Civil Remedies Division of DHHS' Departmental Appeals Board determined that the employee owed the net amount erroneously received (\$2,184.57), plus the amounts withheld for Medicare (\$51.45), federal taxes (\$711.62), and state taxes (\$155.05). The ALJ then further reduced this sum totaling \$3,102.69 by \$545.84, the amount already offset by DHHS's collection efforts, thus finding that the outstanding debt owed by the employee under the Debt Collection Act to be \$2,556.85.

In reaching this result, the ALJ determined that it would be inequitable for DHHS to require the employee to repay duplicate deductions the agency had made for his retirement, health insurance, and thrift savings account, since the employee had never authorized duplicate deductions for the same payroll period. Moreover, the ALJ pointed out that DHHS has admitted its capability to recoup these improper deductions by adjusting its payments to the parties who received the duplicate withholdings.¹

The ALJ then waived \$500 of the amount owed of \$2,556.85 in consideration of the employee's time and effort in pursuing his claim. As a result, the ALJ determined that the outstanding total amount owed by the employee to be \$2,056.85.

On December 20, 1994, DHHS referred Mr. Varga's waiver request to the GAO, contending that the employee owes the gross amount of the overpayment or \$3,548, minus the amount of \$545.84 previously paid by the salary offset. Additionally, DHHS also argued that the action of the DHHS administrative law judge in waiving \$500 of the employee's debt was beyond the scope of her authority since waiver claims over \$1,500 must be submitted to the General Accounting Office under the waiver statute, 5 U.S.C. § 5584.

On February 24, 1995, our Office issued a Settlement Certificate Z-2927984-056, denying the employee's request for waiver and finding that the administrative law judge had no authority to waive any part of the overpayment since it exceeded \$1,500. We further determined that the employee was indebted for \$3,548, the gross

¹The ALJ relied upon an opinion letter dated June 30, 1988, to the DHHS Payroll Accounting Group from Ronald S. Young, Senior Associate Director, AFMD, U.S. General Accounting Office.

amount of the overpayment, even though he did not directly receive all the monies which he is indebted to repay, since the deductions were withheld on his behalf.

Mr. Varga has appealed the denial, basically contending that the debt should be waived because the agency was at fault and that he promptly reported the error. He also objects to repaying the gross amount of the salary overpayment because he only received the net amount.

OPINION

There are two basic issues to be decided on this waiver appeal: the first is the amount of the debt to be collected back from the employee; and the second is the DHHS administrative law judge's authority to waive \$500 of the debt. We shall discuss both issues below.

Amount of Debt

The issue of the amount to be collected from the employee is complicated because of the intervening factor of a decision by the agency's administrative law judge who was appointed to consider the issue of salary offset under 5 U.S.C. § 5514 (1988). Under section 5514, the administrative law judge had the authority to determine whether the debt could be collected by salary offset, but not to extinguish other remedies for collecting the debt. Secretary of Energy, B-211626, Dec. 19, 1984.

We disagree with the employee's assertion that his debt is the net amount² of his duplicate salary payment rather than the gross amount (\$3,548) as stated in our Settlement Certificate. This Office has consistently held that the total amount of the employee's debt due the United States includes both the amount the employee received directly and other amounts disbursed on his behalf for such items as medicare, health benefits, savings account, life insurance, retirement, and federal and state tax withholdings. In other words, the required withholding of monies for these items does not reduce the total indebtedness. Fort Polk Employees, B-261699, October 25, 1996, and Charles R. Ryon, Sr., B-234731, June 19, 1989, and decisions cited. However, we have also said that, if the agency has not already done so, it should attempt to recover the disbursements for all withholdings other than federal and state income taxes and credit the employee with any recovery. The employee should contact the federal Internal Revenue Service and his state taxation authorities for information concerning the appropriate methods of adjusting his tax liability as the result of repaying the overpayment he received. Dr. Joella

²We accept the ALJ's determination in this case of the net amount of the debt—\$2,184.57.

Campbell, B-259660, June 8, 1995, and Amadeo Martinez, Jr., B-261628, June 13, 1996.

As shown above, the ALJ took a different approach by starting with the net amount of the debt. She then determined under the Debt Collection Act that all duplicate deductions (i.e., retirement, health insurance, and thrift savings plan) other than Medicare, federal taxes, and state taxes were not subject to offset by the agency. The ALJ reduced the balance remaining of \$3,102.69 by the amount of \$545.84 previously collected to find that the outstanding debt owed by Mr. Varga to be \$2,556.85.

Under the Debt Collection Act, 5 U.S.C. § 5514(a), the determination of the ALJ rejecting offset as a means of collection for the duplicate deductions other than Medicare, federal taxes, and state taxes precludes the agency from using salary offset to collect these particular deductions. Although the agency is not precluded from initiating collection action for these amounts through other remedies, including litigation,³ we note the ALJ's finding that DHHS admits that it can collect back these deductions by adjusting its payments to the retirement fund, health insurance carrier, and thrift savings board. Accordingly, we hereby advise the agency to promptly take action to adjust those accounts thereby reducing the balance due from Mr. Varga by \$445.31.

ALJ's Authority to Grant Waiver

Under the provisions of 5 U.S.C. § 5584 (1994), the Comptroller General may waive, in whole or in part, a claim in any amount arising out of an erroneous payment of pay to an employee if there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee and the collection thereof would be against equity and good conscience and not in the best interest of the United States. Richard C. Clough, 68 Comp. Gen. 326 (1989). Section 5584(a)(2)(A), however, provides that the maximum amount of debt in each case that may be considered for waiver by an agency head "is in an amount aggregating not more than \$1,500." Under the authority granted to the Comptroller General to prescribe standards for waiver, 5 U.S.C. § 5584(A)(2)(c) (1994), the term "aggregate amount," as used in the waiver provisions, is defined in 4 C.F.R. § 91.2(j) (1996) to mean "the gross amount of the claim against the employee . . . from whom collection is sought." Under the definition, the term "aggregate amount" means the entire amount of the overpayment found due, before any repayment is made and without reduction for any required withholdings. Therefore the DHHS administrative law judge, acting for the Secretary of DHHS, had no authority to grant waiver of \$500 of this employee's

³See Secretary of Energy, B-211626, supra.

debt since the aggregate amount totals more than \$1,500. Fort Polk Employees, B-261699, supra.

Accordingly, the amount to be collected back from Mr. Varga is the amount of the outstanding debt, namely \$2,556.85, as found by the administrative law judge, and, under 5 U.S.C. § 5584, we sustain our prior denial of waiver in that corrected amount.

/s/Seymour Efros
for Robert P. Murphy
General Counsel