

DECISION

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

FILE:

B-186796

DATE: SEP 21 1976

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MATTER OF:

Otis T. Stoddard, Jr., Alfred A. Baker,
Victor J. Billings, Jr. - Request for
waiver of erroneous overpayment of pay

DIGEST:

Federal employees request waiver of debt arising because of overpayment of salary due to administrative failure to terminate night differential upon transfer of workshift and location and failure to substitute partial night differential for hours worked after 6 p.m. Claims against employees are waived under authority of 5 U. S. C. § 5584 (1970) under circumstances where administrative determination is made that employees are free from fault in the matter and where facts show the Government must share a part of the responsibility for the overpayments.

This action is in response to a request made by Messrs. Otis T. Stoddard Jr., Alfred A. Baker, and Victor J. Billings, Jr., for reconsideration of the decision of our Claims Division denying their request for waiver of overpayment pursuant to 5 U. S. C. § 5584 (1970). This matter was forwarded by letter dated March 10, 1976, from the United States Department of the Navy, Naval Air Systems Command, Washington, D. C.

The employees perform lithographic work at the Naval Air Systems Command, Jefferson Plant, Washington, D.C. They were originally employed at the Main Navy location of the Command, where a straight 8-hour night-shift differential was paid. In May 1970, the Command moved to Jefferson Plaza but the 8-hour night shift was unable to continue because the air conditioning unit at Jefferson Plaza was closed down at 7:30 p.m. The Civil Service Commission regulations in effect at the time, Federal Personnel Manual Supplement 532-1, subchapter S8-4, para. c (Inst. 1, February 21, 1969) provided that an authorized night-shift differential will be paid for the entire shift when half or more of the regularly scheduled hours fall between the hours of 6 p.m. and 6 a.m. When less than half of the regularly scheduled hours fall between 6 p.m. and 6 a.m. the employee will be paid the authorized night-shift differential for each hour of work performed between those hours. Since the employees here worked

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the 11 a.m. to 7:30 p.m. shift they were entitled to authorized night differential for any work performed after 6 p.m. or before 6 a.m., or for 1-1/2 hours each day. Accordingly, since they were paid night differential for the entire tour of duty, they were overpaid 7 hours for each day of work performed from the time they were placed on the 11 a.m. to 7:30 p.m. shift until date of error discovery, October 14, 1972, or \$1,592.50, \$1,592.50, and \$1,424.15, respectively.

It is the view of the employees, and that of the Commander, Naval Air Systems Command, that the employees are free from any indication of fraud, misrepresentation, or fault; they request that this Office waive the overpayments of pay pursuant to 5 U. S. C. § 5584 (1970). The employees maintain they were relying in good faith upon the decision of their supervisor who advised them the continuance of 3-hour night differential was correct, and the payroll office who advised the supervisor as to the correctness of their pay. The employees indicate they did not know nor should they have known of the fact that night differential does not embrace afternoon work.

The authority to waive overpayments of pay and allowances is contained in 5 U. S. C. § 5584 (1970). Subsection (b) of that section precludes waiver authority by the Comptroller General:

"(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 or any other person having an interest in obtaining a waiver of the claim."

Implementing the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1975), provides, in pertinent part, for waiver of an erroneous payment whenever:

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

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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. * * *"

Although the above-quoted language, 4 C.F.R. § 91.5(c), refers to an unexplained increase in pay, we have held that the provisions also apply to the continued receipt of salary where the employee has been given reasonable notice that his salary will be reduced in the future and his salary does not change. B-184480, May 20, 1976; and B-180559, March 11, 1974.

The question raised is whether or not a reasonably careful and prudent person under similar circumstances would have made inquiry as to the correctness of his pay. See B-177132, January 4, 1973. The Commander of the Navy Accounting and Finance Center, Washington, D. C., in a report forwarding the request for waiver of the overpayments stated that:

"Denial is recommended. It is common knowledge among night shift employees as to payment of night differential, when there is entitlement, and when entitlement ceases. When the work shift was changed to 1100-1930, the employees involved should have known they were only entitled to 1-1/2 hours night differential. Since their pay was not reduced, they should have brought this fact to the attention of the appropriate authorities."

Under the above circumstances, the employees exercising reasonable care would recognize a shift change is a material event in the course of their employment; but it does not follow that the employees were necessarily at fault by not making further inquiries as to the correctness of their pay. They relied on the decision and judgment of their supervisor and the Naval Air Systems Command payroll office, whose responsibility is to exercise expertise in the area of payroll affairs. The Commander

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of the Naval Air Systems Command, whose experience and judgments as to affairs within the Command must be given great weight, strongly endorses waiver in this case.

In view of the above, it appears the Government must share a part of the responsibility for the overpayments, B-180454, October 18, 1974, and that the employee was acting reasonably and without fault within the meaning of 5 U. S. C. § 5584(b)(1).

Accordingly, we now conclude the claim of the United States against Messrs. Stoddard, Baker and Billings for salary overpayments is hereby waived.

R. F. KELLER

Acting

Comptroller General
of the United States