

DECISION

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

FILE: B-185192

DATE: March 2, 1976

MATTER OF: Ralph R. Bergman - Back pay due

65584

98539

DIGEST:

1. Where employee who is separated receives overpayment of separation pay and overpayment is waived, amount of overpayment waived is deemed valid for all purposes and must be considered valid payment of separation pay. 5 U.S.C. § 5584(e) (Supp. II, 1972).
2. Where employee is separated, receives overpayment of separation pay which is waived, and then is found to have suffered unjustified personnel action which qualifies individual for back pay equal to that which would have been received had unjustified action not occurred, then amount of separation pay which was waived must be considered as separation pay and deducted in determining amount of back pay due. 5 U.S.C. § 5596(b)(1) (1970).

This decision is in response to a request dated October 24, 1975, from Arthur Pittman, Jr., Chief of the Payroll Section and an Authorized Certifying Officer of the National Bureau of Standards, U.S. Department of Commerce, concerning the proper amount of back pay due to an individual who is retroactively restored when there was a waiver of a prior overpayment of severance pay.

Mr. Ralph R. Bergman, an employee of the Institute for Telecommunications Sciences, Department of Commerce, was separated from his position effective August 31, 1973, by reason of a reduction in force. He was entitled to severance pay in the amount of \$3,696.06 but, due to a clerical error, he was paid \$5,891.10. An overpayment of \$2,195.04 was the result. Our Office was requested to waive the overpayment under the provisions of 5 U.S.C. § 5584 (Supp. II, 1972) which our Transportation and Claims Division (now Claims Division) did, DW-Z-2561001-GAD-2, January 29, 1975. Mr. Bergman appealed his reduction-in-force action and the Civil Service Commission Appeals Review Board, on July 14, 1975, ruled that he should be restored retroactively.

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The voucher for the back pay due Mr. Bergman has been enclosed with the request by the Certifying Officer for our determination as to the appropriateness of deducting the previously waived \$2,195.04 from the amount of back pay due.

The overpayment which was waived in the instant case was of severance pay. Respecting treatment of overpayments which have been waived, subsection (e) of section 5584, supra, provides that "[u]nerroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes." Thus the waived erroneous payment was a valid payment of separation pay and, as such, is so reflected in the accounts of the officer accountable for it.

The law which provides for back pay due to an unjustified personnel action states, at 5 U.S.C. § 5596(b)(1) (1970), that the aggrieved employee--

"is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred, less any amounts earned by him through other employment during that period."

Since we have already noted that the waived overpayment is valid as a payment of separation pay, then it follows that it must be considered in determining the amount of pay equal to that which the employee normally would have earned had the unjustified personnel action not taken place.

Accordingly, the voucher which accompanied the submission and which reflects the deduction of the waived amount may be certified for payment in the amount indicated.

R. F. KELLEY

January 1

Comptroller General
of the United States