

DOCUMENT RESUME

03554 - [A2713916]

[Request for Waiver of Overpayment of Foreign Post Differential and Living Quarters Allowances]. B-189421. September 23, 1977. 6 pp.

Decision re: Kent W. Parsons; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Defense: Defense Attache Office, Saigon (South Vietnam).

Authority: 5 U.S.C. 5584 (Supp. IV).

A former civilian employee appealed the denial of his application for waiver of overpayment of foreign post differential and living quarters allowances. Although the employee provided information concerning the termination date of prior employment which indicated he met the agency's requirements for "substantially continuous employment," the waiver was granted. The record did not indicate that the employee knew that payment was erroneous or that prior employment information was incorrect. (Author/HTW)

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DECISION



*S. Agazarian
Civ. Pers.*

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

FILE: B-189421

DATE: September 23, 1977

MATTER OF: Kent W. Parsons - Waiver of Overpayment

DIGEST: Former civilian employee of D.A.O. in Saigon, R.V.N., requests waiver of overpayments of \$5,287.72 for quarters allowances and post differential. Although employee provided information in SF-171 and, particularly, SF-85 forms concerning termination date of prior employment which indicated he met agency's requirements for "substantially continuous employment" under section 031.12b of Standardized Regulations, waiver is granted. Nothing is in record to indicate employee knew or should have known payment was erroneous or that the prior employment information, while not precise, was incorrect. The D.A.O. upon reviewing Mr. Parsons' application for employment should have made further inquiry in the matter of his previous employment.

By letter dated May 20, 1977, Mr. Kent W. Parsons appealed the action of our Claims Division which denied his application for waiver of overpayment of foreign post differential and living quarters allowances in the total amount of \$5,287.72 representing overpayments in the amounts of \$2,867.32 for living quarters allowances and \$2,420.40 for foreign post differential for the period April 6, 1973, through June 22, 1974.

The record shows that Mr. Parsons' initial appearance in Vietnam in July 1968 was when he was recruited in the United States for employment by a corporation doing business in Vietnam. After a few years, Mr. Parsons' employment was terminated, and he returned to the United States, subsequently returning to Vietnam as a locally-hired employee. Mr. Parsons remained in the employ of various United States firms in Vietnam until March 1, 1973. On April 6, 1973, more than 30 days after his resignation from Alaska Barge and Transport he was appointed to the position of mail and file clerk, grade GS-5, with the Defense Attache Office in Saigon, the Republic of Vietnam.

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Mr. Parsons was granted foreign post differential and living quarters allowances at the time of employment. When the employing office learned in 1974, that the employee had terminated his employment more than 30 days before his appointment on April 6, 1977, a determination was made that he had received foreign post differential and living quarters allowances to which he was not entitled.

Section 031.12 of the Standardized Regulations (Government Civilians, Foreign Areas) provides in pertinent part as follows:

"031.12 Employees Recruited Outside the United States

Quarters allowances prescribed in Chapter 100 may be granted to employees recruited outside the United States, provided that

- "a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
- "b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States, by
 - "(1) the United States Government, including its Armed Forces;
 - "(2) a United States firm, organization, or interest;
 - "(3) an international organization in which the United States Government participates;
or

"(4) a foreign government;

and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States * * *."

In regard to post differential section 031.3 of the Standardized Regulations provides in pertinent part as follows:

"031.3 Post Differential

Post differential prescribed in Chapter 500 may be granted to employees who are described in sections 031.11 and 031.12, including married employees, and to employees officially stationed in the United States who are on extended detail (Sec. 541) in a foreign area * * *."

The agency, in considering employee eligibility for quarters allowances under section 031.12 of the Standardized Regulations, determined that any lapse in employment of 30 days or more precludes a finding that an individual "had been in substantially continuous employment." Accordingly, since Mr. Parsons' appointment with the Defense Attache Office was effective on April 6, 1973, he would have been ineligible for quarters allowances and post differential if his previous employment had ended prior to March 7, 1973. Mr. Parsons had indicated on his Standard Form 171, Personnel Qualifications Statement (SF-171) dated April 2, 1973, that he had been employed by his previous employer, Alaska Barge and Transport, Inc. (Alaska Barge), a U.S. Government invited contractor, until "March 1973". In addition, Mr. Parsons had indicated on Standard Form 85, Data for Non-sensitive or Noncritical Positions (SF-85), dated April 6, 1973, that his employment with Alaska Barge terminated in "4-73." Based on this information the Defense Attache Office had determined that Mr. Parsons had been "in substantially continuous employment" at the time of his appointment on April 6, 1973, and he was

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accordingly authorized payment of quarters allowances and post differential. We believe, that, in this instance, the Defense Attache Office, upon reviewing Mr. Parsons' application for employment, should have made further inquiry into the matter of Mr. Parsons' previous employment before it determined that Mr. Parsons was eligible for payment of living quarters allowances and foreign post differential. It would seem that by contacting either Mr. Parsons or his former employer, Alaska Barge, the Defense Attache Office could have ascertained the date on which Mr. Parsons' prior employment actually ended. As it was, based on the record, the agency could not have known which answer by Mr. Parsons was correct, termination of employment during the month of "March 1973" or "4-73." If the correct answer were "March 1973" it would have been necessary for the agency to know the exact day on which the previous employment ended, since as discussed above, Mr. Parsons would not have been eligible for payment of quarters allowances and post differential if his employment ended prior to March 7, 1973. Thus it cannot be said that the Defense Attache Office was without fault in the matter.

During a routine audit of official personnel folders, it was discovered on June 21, 1974, that Mr. Parsons had been erroneously authorized payment of living quarters allowances and foreign post differential as the review of his records indicated that Mr. Parsons' employment with Alaska Barge actually ended on February 16, 1973, the last day on which he performed compensable work, which was more than 30 days prior to his appointment with the Defense Attache Office and therefore he had not "been in substantially continuous employment" at the time of his appointment so as to be eligible for authorization of quarters allowances and foreign post differential.

The authority to waive overpayments of pay and certain allowances is contained in 5 U.S.C. 5584 (Supp. IV, 1974) which provides, in pertinent part, that the Comptroller General may not waive any claim where 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.

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The administrative agency has recommended against waiver based on a determination that Mr. Parsons was partially at fault in this matter and that doubt existed as to his good faith. This conclusion was based on Mr. Parsons' answers on his SF-17 and his SF-85 in which he indicated that his employment with Alaska Barge ended in "March 1973" and in "4-73." Our Claims Division agreed with this determination and accordingly denied waiver of this claim.

However, upon further consideration we do not agree that Mr. Parsons was at fault or lacked good faith in the matter. The record does not contain any evidence to indicate that Mr. Parsons knew or should have known what requirements existed under the applicable regulations in order to qualify for quarters allowances and post differential. There is nothing in the record to show that the Defense Attache Office had ever informed Mr. Parsons as to the basis upon which living quarters allowances and foreign post differential were authorized. There was nothing present on either the SF-171 or SF-85 which Mr. Parsons submitted which would have indicated to him that his answers, with regard to his previous employment, would be the basis upon which the agency would determine his eligibility for quarters allowances and post differential.

Under the circumstances, Mr. Parsons having no prior service with the Federal Government, and his position being a mail and file clerk grade GS-5, we cannot conclude that Mr. Parsons either knew or should have known of the regulations relevant to entitlement to quarters allowances and post differential. We do not think that Mr. Parsons' answers on the SF-171 and SF-85, which indicated that his employment with Alaska Barge continued until "March 1973" and "4-73," are in and of themselves sufficient evidence to indicate fraud, misrepresentation, fault or lack of good faith in this matter on the part of Mr. Parsons. While February 16, 1973, was the last day Mr. Parsons performed work for Alaska Barge, his employment with the firm did not officially end until March 1, 1973, the day his employment contract was terminated. The record also shows that although Mr. Parsons' employment with Alaska Barge ended as of March 1, 1973, the company continued to sponsor their former employee's stay in Vietnam so that he could remain in the country until his appointment with the Defense Attache Office on April 6, 1973.

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In view of these facts, Mr. Parsons' answers on his SF-171 showing an employment termination date of "March 1973" was correct. It is also understandable why Mr. Parsons indicated on his SF-85 that his employment with Alaska Barge ended in "4-73" particularly since this form is for purposes of investigating an applicant's personal background.

Accordingly, since there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of Mr. Parsons, collection of the overpayment in the amount of \$5,287.72 is hereby waived under the provisions of 5 U.S.C. 5584 (Supp. IV, 1974).


Deputy Comptroller General
of the United States