

**DECISION**

18226 *Metzger*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-201253

DATE: May 26, 1981

MATTER OF: Vincent J. Mazzarino

**DIGEST:** An employee was overpaid Temporary Lodging Allowance after he moved into permanent quarters. Since the employee failed to inquire when his pay continued to include a substantial allowance when he knew that allowance was to terminate, he is not without fault, and under applicable regulations, waiver is precluded. Financial hardship cannot form the basis for waiver that may not otherwise be granted.

Mr. Vincent J. Mazzarino requests reconsideration of our Claims Division's July 23, 1979 denial of his application for waiver of his debt to the United States in the amount of \$6,652.81. An amount of \$3,693 has been repaid. The debt arose from overpayment of Temporary Lodging Allowance (TLA) as a Department of the Air Force civilian employee. The denial is sustained.

Mr. Mazzarino, while employed by the Air Force in Wiesbaden, Germany, was entitled to and received TLA from February 5, 1968, through April 21, 1968. When he moved to permanent quarters and became entitled to Living Quarters Allowance (LQA) on April 22, 1968, his TLA should have terminated. Due to administrative error, Mr. Mazzarino continued to receive TLA in addition to the authorized LQA. As a result, he was overpaid for the period April 22, 1968, through February 7, 1970, in the amount of \$6,652.81. The overpayment was discovered through payroll audit and he was notified of his debt on February 20, 1970.

Mr. Mazzarino, in his original request for waiver, contended, in essence, that prior to his notification he had no knowledge that he was being overpaid, that he submitted all appropriate forms required during the period to indicate his quarters status, and that since his pay continued without major variations he assumed that it was correct. Further, he requests that waiver be granted in view of his many years of superior Federal service and the financial hardship involved in repayment. Waiver was denied due to partial fault on his part in not questioning the excessive quarters allowances he received when he should have known that he was not entitled to such a large amount.

*[Request for Waiver of Indebtedness]*

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In his appeal, Mr. Mazzarino points out that deductions were made monthly from his pay in partial repayment from 1970 until on/about March 2, 1974. He says that he did not know his waiver request submitted in 1974 had been denied until he was notified to that effect by the Air Force in March 1980. Further, that repayment would be extremely difficult for him since he is retired and unable to seek employment.

The Comptroller General is authorized by 5 U.S.C. 5584 to waive claims for overpayment of pay and allowances; other than travel and transportation expenses and allowances and relocation expenses, if collection would be "against equity and good conscience and not in the best interests of the United States." Such authority may not be exercised if there is "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 statute, 4 Code of Federal Regulations (CFR) 91.5(c) (1980), provides in pertinent part:

"\* \* \* 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.  
\* \* \*"

We have held that this language applies not only to unexplained increases in pay, but also to continued receipt of the same salary when a reduction is expected. Arthur Weiner, B-184480, May 20, 1976.

If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. Roosevelt W. Royals, B-188822, June 1, 1977.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility

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to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See James T. Fielding, B-194594, September 27, 1979.

In the present case, the record indicates that while Mr. Mazzarino was entitled to receive less than \$100 per pay period in quarters allowances after April 21, 1968, his pay records show that he received \$232 per pay period. When he was paid more than double the amount of quarters allowance for the next pay period after he moved from temporary to permanent quarters, he should have been alerted to the likelihood of an error in his pay. Given this unexplained payment of quarters allowance we can only conclude that he was partially at fault in failing to recognize the administrative errors and in not notifying payroll personnel when they occurred.

Since we find that Mr. Mazzarino was on notice of the overpayments we cannot find that he was free from fault or that collection action is against equity and good conscience or contrary to the best interests of the United States. Mr. Mazzarino's argument that delays in adjudicating his claim have placed him in a position of financial hardship does not provide a basis to excuse his indebtedness. An employee on notice of an error in his pay has a duty to return the excess sums or set aside this amount for refund at such time as the administrative error is corrected. Robert A. Turner, B-200116, March 23, 1981.

Accordingly, the denial of Mr. Mazzarino's request for waiver of his indebtedness is sustained.



Acting Comptroller General  
of the United States