

DECISION



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

FILE: B-218722

DATE: December 17, 1985

MATTER OF: Frank A. Ryan

DIGEST:

An Air Force employee who had been receiving post allowance and living quarters allowance while stationed in England was erroneously paid the same allowances after his transfer from England to Germany. The employee should have expected a decrease in the amount of his pay based on the termination of these allowances but he failed to examine his record of bank deposits, which would have indicated that his pay did not decrease after his transfer to Germany. Therefore, the employee is not without fault, and under applicable regulations, waiver is precluded. Financial hardship cannot form the basis for waiver.

Mr. Frank A. Ryan requests reconsideration of our Claims Group's November 29, 1979 denial of his application for waiver of his debt to the United States in the amount of \$14,824.46. The debt arose from erroneous payments of post allowance and living quarters allowance made to Mr. Ryan as a Department of the Air Force civilian employee. The erroneous payment may not be waived because Mr. Ryan should have known or could have determined from the examination of his Leave and Earnings Statements and his bank deposits that he was receiving amounts to which he was not entitled.

While assigned to duty in West Ruislip, England, Mr. Ryan received both a post allowance and a living quarters allowance. Effective October 1, 1972, Mr. Ryan was transferred from West Ruislip, England, to Weisbaden, Germany, under orders authorizing delayed travel of his dependents. Initially, he was provided quarters in the American Arms Hotel, a Government facility in Weisbaden for which he was not charged a rental fee. On June 8, 1973, he was joined by his family and moved from the American Arms Hotel into other Government quarters. The post allowance

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and living quarters allowance payments Mr. Ryan had received while stationed in England were continued after his permanent change of station to Germany even though he was not entitled to either allowance. A post allowance was not authorized for the employee stationed in Weisbaden and, under 5 U.S.C. § 5923, a living quarters allowance may not be paid to an employee who, like Mr. Ryan, is furnished Government quarters without rental charge. Due to the administrative error on the part of the Air Force in failing to terminate both allowances, Mr. Ryan was overpaid for the period October 1, 1972, through January 3, 1976, in the amount of \$14,824.46.

In his original request for waiver, Mr. Ryan stated that he did not apply for a quarters allowance and since his monthly check was deposited in a bank, he had no reason to doubt the accuracy of the payments. Further, he indicated that the overpayment was due solely to administrative ineptitude without fault on his part and requested that waiver be granted in view of the financial hardship involved in repayment. Waiver was denied based on his failure to question his entitlement to the same overseas allowances in Germany that he received while stationed in England and for failure to review his bank statements which would have indicated excessive deposits of pay and allowances. Our Claims Group held that Mr. Ryan's failure to notice and report the error in his pay placed him at least partially at fault in the matter and, thus, that his indebtedness could not be waived.

In his appeal, Mr. Ryan states that he has been unable to work since his involuntary retirement from Federal employment in 1976 and that he has a difficult time meeting his current financial obligations. He reiterates his contention that his paychecks were on direct deposit to American Express and that there was no obvious indication of any error in the amounts of pay and allowances. In addition, he says that he received no further communication after he made his original application for waiver and assumed the waiver had been granted.

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 C.F.R. § 91.5(c) (1984) 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; Vincent J. Mazzarino, B-201253, May 26, 1981.

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; Vincent J. Mazzarino, B-201253, supra.

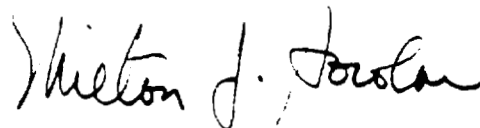
The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. James T. Fielding, B-194594, September 27, 1979; Vincent J. Mazzarino, B-201253, supra.

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In the present case, the record indicates that Mr. Ryan was overpaid \$174.02 for each pay period from October 1, 1982, through January 6, 1973, for post allowance and living quarters allowance. Similarly, he was overpaid \$174.44 for each pay period from January 20, 1973, through January 3, 1976, for these same allowances. These payments are listed on his pay records as other entitlements. They were included in his Leave and Earnings Statements in the same manner. Although he had been entitled to overseas allowances while stationed in England, he did not apply for these allowances or receive any information to indicate that they would continue after his transfer to West Germany where he was to be furnished Government quarters. For this reason we believe that Mr. Ryan should have anticipated that the two allowances in question would be terminated and, in fact, Mr. Ryan does not claim otherwise. When the amount of his pay was not decreased, he should have been alerted to the likelihood of an error in his pay. Under these circumstances we can only conclude that he was partially at fault in failing to recognize the administrative errors by checking his Leave and Earnings Statements and the record of his bank deposits on a regular basis and in failing to notify appropriate agency personnel that his pay was not reduced when he was reassigned to Weisbaden.

Since we find that Mr. Ryan 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. Ryan's argument that delays in collecting his claim have placed him in a position of financial hardship does not provide a basis to excuse this 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. Ryan's request for waiver of his indebtedness is sustained.



Acting Comptroller General
of the United States