



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: David L. Williams - Waiver of Overpayments -
Knowledge of Pay Error

File: B-243315

Date: September 6, 1991

DIGEST

A reemployed annuitant's request for waiver must be denied when he was aware that the amount of the annuity was not being deducted from his salary and that he was being overpaid. Although the employee immediately notified the agency, we have consistently held that when an employee is aware of an error he cannot reasonably expect to retain the overpayment. Financial hardship cannot form the basis for waiver.

DECISION

Mr. David L. Williams, a reemployed annuitant for the Department of Labor, has requested waiver of salary overpayment under the provisions of 5 U.S.C. § 5584 (1988). We deny the request.

BACKGROUND

Mr. Williams was hired as a reemployed annuitant by the Department of Labor on July 5, 1987, and appointed to a GS-13, step 7 position at a salary of \$46,473 per annum. As a reemployed annuitant, Mr. Williams' salary was subject to reduction by the amount of Civil Service Annuity received. 5 U.S.C. § 8344 (1988). Due to an error in the Department's automated payroll system, no reductions were made in Mr. Williams' salary from July 5, 1987, through June 16, 1990. Thus, Mr. Williams was overpaid \$75,693.28.

Mr. Williams does not assert that he was unaware that his salary was subject to reduction of his annuity; in fact, the record shows that he was so advised in an employment interview. In addition, his initial Standard Form 50, and several later Form 50's were annotated to the effect "that the annual salary is to be reduced by the amount of the retirement annuity and by future cost of living increases." However, Mr. Williams states that on numerous occasions he advised his supervisor and appropriate officials in his personnel and payroll offices that he was being overpaid and his requests

were either ignored or he was advised that his payroll records were correct and that he was receiving the correct amount of pay. Mr. Williams says that it would cause him extreme hardship if he had to repay the amount of the overpayment at this time. In support of his request, Mr. Williams states that this Office waived overpayment of pay for a reemployed annuitant under similar circumstances in decision Lula F. Fones, B-203186, Dec. 29, 1981.

Mr. Williams also requests that consideration be given to recent interim regulations issued by the Office of Personnel Management (OPM) pertaining to reemployment of military and civilian retirees. The regulations contain special provisions for reemployment without penalty (deduction of retired pay) to meet exceptional recruiting or retention needs. 56 Fed. Reg. 6206 (1991) to be codified at 5 C.F.R. Part 553.

The Department of Labor has recommended that Mr. Williams' waiver request be denied on the basis that he was aware of the overpayment and this places him partially at fault and such a finding of fault precludes waiver of his claim.

OPINION

The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584 (1988), permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other persons having an interest in obtaining a waiver.

It has been consistently held that when an employee is aware of an overpayment of pay when it occurs, he is not entitled to relief under 5 U.S.C. § 5584 if he accepts such an overpayment knowing it to be erroneous. The employee cannot reasonably expect to retain it and he should make provision for its repayment. In such case, collection of an overpayment is not considered to be against equity, good conscience, or contrary to the best interests of the United States, notwithstanding the fact that the employee may have brought the situation promptly to the attention of the proper authorities and sought an explanation or correction of the error. Guy Cloutier, B-231019, Jan. 26, 1989; William J. McGovern, B-232546, Oct. 17, 1989; Hawley E. Thomas, B-227322, Sept. 19, 1988.

It appears from the record that Mr. Williams knew from the receipt of his first paycheck that he was receiving pay in excess of his entitlement. Although he questioned his pay on numerous occasions, there is no indication that he

specifically stated that he was a reemployed annuitant and that his salary was subject to reduction by the amount of his annuity. For example, in his memorandum to Personnel he stated only that his pay appeared to be excessive and may need to be adjusted. Further, the assertion that he repeatedly called the error to the attention of proper authority does not establish a basis upon which waiver may be granted. See Richard W. DeWeil, B-223597, Dec. 24, 1986, where we denied waiver to a reemployed annuitant who was aware of a pay error and brought the error to the attention of the agency on 10 separate occasions, and who retained such amount after he still continued to be overpaid.

The case cited by Mr. Williams in support of his contention that waiver should be granted, Lula F. Fones, B-203186, supra, is distinguishable. The employee in that case was aware that her salary would have to be reduced by the amount of her annuity and she brought this fact to the attention of her payroll office where she was assured that her proper annuity was being deducted and the amount of pay she was receiving was correct. Ms. Fones accepted the assurance from her payroll office as correct. In Mr. Williams' case, the record indicates he did not believe his pay was correct and that he was entitled to retain the money.

Since we find that Mr. Williams was on notice of the overpayment we cannot find that he was free from fault. The fact that collection of the debt will create a 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 sum or set aside this amount for refund at such time as the administrative error is corrected. James T. Harrod, B-195889, Feb. 14, 1980; Frank A. Ryan, B-218722, Dec. 17, 1985.

As regards Mr. Williams' request that we consider the new OPM regulations pertaining to the hire of retirees without penalty, we would point out that the regulations were not in effect when Mr. Williams was hired.

Accordingly, Mr. Williams' request for waiver is denied.

for 
Comptroller General
of the United States