



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John A. Banuchie

File: B-247771

Date: August 12, 1992

DIGEST

Due to administrative error in relying on a superseded regulation of the Office of Worker's Compensation Programs (OWCP), the Forest Service erroneously kept an employee in a continuation-of-pay status, and thus overpaid him, when he should have been receiving compensation directly from OWCP. Since the erroneous payments of Forest Service compensation and the OWCP compensation are essentially duplicate payments, we do not believe that collection of the amount of money equivalent to the OWCP compensation would be against equity and good conscience. Waiver granted in part and denied in part.

DECISION

The Forest Service, United States Department of Agriculture, on behalf of its employee, Mr. John A. Banuchie, requests waiver of erroneous payments of continuation of pay totalling \$1,691.04, which occurred due to administrative error during a period when Mr. Banuchie was entitled to receive compensation from the Office of Worker's Compensation Programs (OWCP), Department of Labor.¹ As explained below, we grant waiver in part and deny waiver in part.

On March 26, 1991, Mr. Banuchie injured his left knee while in the performance of his official duties and saw a doctor that day. Mr. Banuchie used 18 hours continuation of pay on March 27 and 28, 1991, and returned to work on March 29, 1991. Thereafter, several absences totalling 30 hours were properly charged to continuation of pay. He worked until August 27, 1991, when, after OWCP had approved his doctor's request for surgery, surgery was performed on his knee on August 28, 1991.

¹This request was submitted by Forest Supervisor Dave Morton, Forest Service, Ottawa National Forest, Ironwood, Michigan.

During the period August 21 to October 2, 1991, the Forest Service erroneously charged 208 hours of absence incident to the surgery to continuation of pay on the basis of an out-dated instruction in the Forest Service Handbook stating that the employee has 6 months from the date of return to work to use any remaining continuation-of-pay days.² By letter, dated October 3, 1991, OWCP informed the Forest Service that if the employee's disability recurs more than 90 days after the employee first returns to work, as Mr. Banuchie's disability did, then the employee is only entitled to compensation from OWCP, and not continuation of pay, when his claim is approved by OWCP. Thus, since Mr. Banuchie's 90-day period expired on June 26, 1991, he was no longer eligible for continuation of pay after that date, and the 208 hours erroneously charged to continuation of pay after that date must be changed to an appropriate leave status.³ The Forest Service has also informed us that on or about December 6, 1991, Mr. Banuchie received \$1,356.66 in gross compensation from OWCP for the same period as noted above.

The Forest Service notes that the actions it took were done in good faith and in conformance with the provisions on worker's compensation cases in its Forest Service Handbook, although it turned out that those provisions had been changed by OWCP without the Forest Service's knowledge at the time it overpaid Mr. Banuchie. Furthermore, neither the Forest Service nor Mr. Banuchie had knowledge of these overpayments until receipt of OWCP's letter, dated October 3, 1991.

Waiver of claims for overpayment of compensation may be granted under 5 U.S.C. § 5584 (1988 and Supp. III 1991), when collection would be against equity and good conscience and not in the best interests of the United States, unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the employee's part. While there are no indications of fraud, misrepresentation, lack of good faith or fault on Mr. Banuchie's part, we do not believe that collection of the amount of money equivalent to the check which Mr. Banuchie received from OWCP on or about December 6, 1991, namely \$1,356.66, would be against equity and good conscience in the circumstances of the present case. Although it was not his fault, the erroneous payments

²Forest Service Handbook, § 33.13 (February 1986 ed.).

³See 5 U.S.C. § 8118 (1988) and 20 C.F.R. §§ 10.200 et seq. (1991), especially § 10.208(b) (on recurrence of disability), and §§ 10.202 and 10.301(b) (on employee's right to elect whether to receive pay for leave or to receive compensation directly from OWCP).

of Forest Service compensation and the OWCP compensation which were received by Mr. Banuchie are essentially duplicate payments for the same period of time involved, and all parties knew this on or about October 3, 1991. See Larry Jamerson, B-248732, July 28, 1992.

Accordingly, we grant waiver in the amount of \$334.38 and deny waiver of the remaining \$1,356.66 in erroneous overpayments. While this leaves Mr. Banuchie with a gross indebtedness of \$1,356.66, we note that he is due a credit of \$65.96 toward this amount due to duplicate deductions of certain health and life insurance premiums by OWCP.⁴ Thus, his net indebtedness is \$1,290.70.

for Seymour E/pos
James F. Hinchman
General Counsel

⁴The Forest Service has informally informed us that OWCP's deductions of \$65.34 for health insurance and \$0.62 for life insurance from Mr. Banuchie's OWCP compensation check, dated Dec. 6, 1991, were duplicate deductions of amounts already deducted from his Forest Service compensation.