

Reading

149803



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Caroline D. Tejada

File: B-252373

Date: August 2, 1993

DIGEST

1. A reemployed annuitant's salary was reduced by an amount consistent with her estimated annuity which had been erroneously computed. The error was later discovered and corrected through issuance to her of an SF-50 "Notification of Personnel Action," showing that the annuity to be deducted from her salary was being underdeducted approximately \$9,000 annually or about \$300 per pay period. When salary payments thereafter were not further reduced consistent with the corrected SF-50, the employee should have inquired of her payroll office about the accuracy of her pay. Having failed to do so, she is considered at least partially at fault, thus precluding waiver of that part of her debt. 5 U.S.C. § 5584(b) (1988).

2. A reemployed annuitant, who was receiving the salary of step 2 of her grade, was erroneously given a within-grade increase to step 3 of her grade. Since she was not aware of being placed in step 3 of her grade until after the error was discovered administratively and corrected, waiver is granted for that part of her debt representing the difference between the pay of step 2 and step 3 of her grade received during the period in question.

DECISION

This decision is in response to correspondence from Ms. Caroline D. Tejada, in which she appeals our Claims Group settlement Z-2917819, Dec. 23, 1992, which denied waiver of her debt, in part. On review, we modify our Claims Group's settlement and allow waiver for an additional amount.

Ms. Tejada, who had been a regular, full-time civilian employee of the Department of the Air Force stationed at Kelly Air Force Base, retired from government service on November 30, 1990. On December 3, 1990, she was given a temporary appointment, not to exceed 1 year, to the position she held at retirement and at the same grade and step

(GS-12, step 2). Since Ms. Tejada was a reemployed annuitant, her salary was subject to reduction by the amount of the annuity she was to receive.¹ However, due to administrative error, Ms. Tejada's annuity rate was erroneously estimated at \$13,284 and so noted on the Notification of Personnel Action (SF-50) issued to her shortly after she began her post-retirement reemployment on Monday, December 3, 1990.

On March 19, 1991, the error was discovered and Ms. Tejada was issued a corrected SF-50 showing that her annuity was \$22,404, rather than the \$13,284 previously shown. Notwithstanding that, the payroll office for the agency failed to put this information into their payroll system. As a result, Ms. Tejada's salary continued to be reduced based on the erroneous annuity rate of \$13,284. This continued even after Ms. Tejada's temporary appointment was extended on December 3, 1991, for an additional 90-day period.

Effective March 2, 1992, Ms. Tejada's appointment was further extended an additional 90 days. The SF-50 issued to her at that time showed that her annuity rate had increased to \$23,230. However, a new error was introduced by establishing her salary at the grade GS-12, step 3 rate rather than the grade GS-12, step 2 rate. Since the payroll office still failed to put the higher annuity rate information into the system, this caused additional overpayments to be made to Ms. Tejada. As a result, when the errors were discovered in late March 1992 and corrected, the salary overpayments to Ms. Tejada totaled \$12,071.68.

In response to a request for waiver of that debt, our Claims Group analyzed the record and concluded that waiver of the salary overpayments for the period December 2, 1990, to March 23, 1991 (\$2,796.80), was appropriate, but not for the salary overpayments made thereafter (\$9,274.88). This was based on the finding that, although Ms. Tejada's post-retirement salary was reduced by an amount consistent with the erroneously estimated annuity she was to receive, thus establishing lack of notice of error for that period, the issuance to her of the corrected SF-50 in March 1991, showing that her annual annuity rate initially had been understated by more than \$9,000, should have alerted her to the fact that a payment error was being made. When her biweekly salary was not further reduced thereafter, she should have questioned the accuracy of her pay.

Ms. Tejada argues that she was never briefed on her entitlements as a reemployed annuitant because she never cleared the air base. Since others were responsible to

¹5 U.S.C. § 8344 (1988).

insure that all the various documents regarding her employment were in order, she assumed they were doing their jobs correctly. She argues further that she could not know whether her salary was correct because the Directorate of Civilian Personnel, Air Force Intelligence Command, was responsible for her personnel records and her salary was paid by the Kelly Air Force Base Finance Office. In this regard, she says that her pay goes to her bank account by direct deposit and she is not notified of the deposits until nearly a month later, and that is usually before she receives any SF-50 which might reflect any pay adjustment. Thus, it is her view that she was not at fault and that full waiver should be granted.

Waiver of a debt under the provisions of 5 U.S.C. § 5584 (1988) is an equitable remedy. As such, waiver must necessarily depend on the facts in each case, since by statute "an indication of . . . fault . . . on the part of an employee" precludes waiver."

Fault, as used in 5 U.S.C. § 5584, is considered to exist if it is determined that an employee exercising reasonable diligence should have known that an error existed, but failed to take corrective action.³ The standard employed is whether a reasonable person should have been aware that he/she was receiving payment in excess of their proper entitlement.⁴ Generally, if an employee receives documents which would indicate an overpayment and the employee fails to review those documents for accuracy or otherwise fails to take corrective action, the employee is not without fault and waiver will be denied.⁵

In the present case, Ms. Tejada knew that her salary was to be reduced by an amount equal to her retirement annuity. Since the amount subtracted from her biweekly pay between December 2, 1990, and March 23, 1991, was consistent with the incorrect estimate, we concur with our Claims Group's conclusion that there was insufficient evidence that she was aware of the overpayments.

However, in March 1991, Ms. Tejada was issued an SF-50 specifically correcting that error by showing an increase in

³5 U.S.C. § 5584(b).

⁴4 C.F.R. § 91.5 (1993).

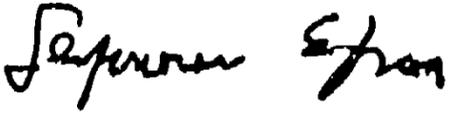
⁴George R. Beecher¹, B-192485, Nov. 17, 1978.

⁵ David J. Rendon, 68 Comp. Gen. 573 (1989), and decisions cited. See also, Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988, and John J. Williams, B-251667, Apr. 2, 1993.

1

the amount of her annual annuity of approximately \$9,000. A simple calculation by Ms. Tejada would have shown that her biweekly salary should have been reduced by at least \$300 more per pay period. When her Leave and Earning Statements for the pay periods beginning March 24, 1991, showed that her biweekly gross pay continued to be the same she should have made inquiry about the accuracy of her pay. Since she failed to do so, she must be deemed partially at fault in the matter. Therefore, waiver of that part of her debt represented by the underdeduction of her annuity for the period after March 24, 1991, may not be granted.

However, the foregoing conclusion does not apply to the within-grade increase erroneously paid Ms. Tejada for the period beginning March 2, 1992. The record indicates that she was not aware of her being placed in step 3 of her grade until after the error was discovered administratively and corrected. Therefore, waiver is hereby granted for that part of her debt represented by the difference between step 2 and step 3 of her grade (GS-12) erroneously paid her for the period beginning March 2, 1992. The action taken by our Claims Group is modified accordingly.

for 
James F. Hinchman
General Counsel