



Comptroller General
of the United States

251113

Washington, D.C. 20548

Decision

Matter of: James A. Moule
File: B-253967
Date: November 30, 1993

DIGEST

An employee, who was transferred and promoted from grade GS-12, step 10, to grade GM-13, step 00, with an accompanying pay increase, was issued an SF-50 "Notification of Personnel Action" within 90 days thereafter erroneously granting him an additional merit pay increase. A correcting SF-50 was issued 2 days later containing a full explanation of the error, but due to a further administrative error, the merit pay increase was not canceled. This resulted in biweekly overpayments to the employee until the error was discovered 10 months later. Waiver is denied. When the employee began receiving the additional increase in pay after issuance of the correcting SF-50, he should have inquired about the accuracy of his pay. Having failed doing so, he is deemed to be partially at fault, thus precluding waiver of the debt. 5 U.S.C. § 5584(b).

DECISION

This decision is in response to a request from Mr. James A. Moule, appealing our Claims Group's settlement Z-2917011, Oct. 19, 1992, which sustained his employing agency's denial of waiver of his debt to the United States in the amount of \$1,176. We conclude that our Claims Group's action was correct, for the following reasons.

Mr. Moule, an employee of the Veterans Administration and stationed in El Paso, Texas, was transferred to Phoenix, Arizona, effective August 12, 1990. Incident to that transfer, he was promoted from grade GS-12, step 10, to grade GM-13, step 00. Prior to that transfer, he received an outstanding rating and on August 30, 1990, he received a Performance Award of \$2,313. By SF-50 "Notification of Personnel Action," dated October 5, 1990, Mr. Moule was erroneously granted a merit pay increase to be effective October 7, 1990, which increased his annual salary from \$49,701 to \$51,121. On October 7, 1990, a correcting SF-50 was issued noting in the remarks area that Mr. Moule was ineligible for a merit pay increase because he had moved

into the PMRS and received a base pay increase within 90 days of the effective date of the merit pay increase. Notwithstanding the issuance of his correcting SF-50, Mr. Moule received the higher incorrect pay, and continued to receive it until July 27, 1991, when the erroneous payments were discovered and terminated. As a result, Mr. Moule was overpaid \$1,176 during that period.

Our Claims Group's disallowance was based on its determination that Mr. Moule should have at least questioned his entitlement to receive a merit increase in his pay so shortly after he received a lump-sum Performance Award and that his failure to do so made him partially at fault. In response, Mr. Moule argues that all the various pay actions occurred during the period shortly following his transfer during which time he was doing work for both his new and old positions, attempting to buy and sell residences, and performing other responsibilities associated with relocating his family. He also argues that, as a GS-12 engineer, he had almost no knowledge about personnel regulations, that he did not know the merit increase was improper, and that he was never offered any training to become familiar with the GM pay system so as to avoid problems such as this.

Waiver of a debt under 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.² The standard employed is whether a reasonable person should have been aware that he/she was receiving payment in excess of his/her proper entitlement.¹

We do not question Mr. Moule's good faith, but we do find that he was at fault based on the following facts. An SF-50, dated October 5, 1990, was issued to Mr. Moule notifying him of the merit pay increase of \$1,420 to his annual salary effective October 7, 1990. However, on October 7, 1990, another SF-50 was issued to him notifying him of the error, with an express statement that he was not entitled to a merit pay increase. Therefore, when Mr. Moule began receiving that increase in his pay, he should have

¹5 U.S.C. § 5584(b).

²4 C.F.R. § 91.5 (1993).

³George R. Beecher1, B-192485, Nov. 17, 1978.

known that an error was being made and should have inquired about the accuracy of his pay. Since he failed to do so, he must be deemed to be partially at fault in the matter. Accordingly, the action by our Claims Group to disallow waiver in Mr. Moule's case is sustained.

James F. Hinchman

James F. Hinchman
General Counsel

JFH