

Matter of: Paxton A. Parrish - Waiver of Salary
Overpayments - Reemployed Annuitant

File: B-252521

Date: January 21, 1994

DIGEST

A temporary employee of the General Services Administration (GSA) who applied for and began receiving a deferred annuity from the Office of Personnel Management at age 62, while continuing his temporary employment, received overpayments as his annuity was not deducted from his pay. Waiver is denied since the employee did not pursue the matter adequately when he suspected possible overpayment.

DECISION

Mr. Paxton A. Parrish, requests reconsideration of a Claims Group settlement¹ that denied his request for waiver of repayment of salary overpayments totalling \$28,272.72, made to him from June 1, 1986, through March 24, 1989. We affirm our Claims Group determination and deny waiver to Mr. Parrish.

Mr. Parrish was employed with the Department of Labor as a GS-12, until his resignation on June 25, 1983. On August 19, 1984, he accepted temporary employment with the General Services Administration (GSA) as a Custodial Worker, WG-1, in Flint, Michigan. Mr. Parrish's temporary appointment continued until he resigned on March 24, 1989.

During his tenure with GSA, Mr. Parrish applied to the Office of Personnel Management (OPM) to receive a deferred civil service retirement annuity upon reaching age 62. The annuity became effective June 1, 1986, while Mr. Parrish continued to be employed by GSA. Since Mr. Parrish was employed while receiving his annuity, his pay should have been reduced by the annuity according to 5 U.S.C. § 8344 (1988). GSA discovered the overpayment when Mr. Parrish

¹Z-2916894, February 9, 1993.

resigned. He was indebted to the United States for \$28,272.72 in salary overpayment.²

Mr. Parrish requested waiver of the debt. However, the Director, Finance Division, GSA Region 6, Kansas City, Missouri, recommended against waiver. Our Claims Group denied the waiver request.

In his request for reconsideration, Mr. Parrish argues that he was unaware of the overpayment until he received notice from GSA in 1989. Mr. Parrish points to a memorandum dated March 7, 1986, which he submitted with his waiver request, of a telephone conversation he had with an OPM Personnel Information Specialist. According to his memo, the OPM specialist told Mr. Parrish that he could retain his civil service annuity since he was a temporary employee.

Mr. Parrish also has submitted a corroborating statement from a coworker concerning this phone conversation. In his statement, the coworker explains that he listened in to the conversation on an extension phone. The coworker also states that, as the senior worker, Mr. Parrish asked him to forward the memorandum to their supervisor, which he did. He further states that a few days later at a meeting the supervisor confirmed that Mr. Parrish was not subject to the offset. Mr. Parrish has provided a statement from another coworker attesting to the same meeting. Finally, Mr. Parrish has submitted a copy of a letter he states that he sent to his GSA Personnel Office at the outset of his employment, asking whether his employment as a part-time employee would jeopardize his retirement election under civil service.

OPINION

The Comptroller General pursuant to 5 U.S.C. § 5584 (1988) may waive claims for overpayment of pay and allowances 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 by the employee or any other person having an interest in obtaining a waiver of the claim.

Fault exists if, in light of all the circumstances, the individual concerned should have known that an error existed but failed to take action to have it corrected. In deciding this, we ask whether a reasonable person in the employee's position should have been aware that he was receiving

²\$7,047.11 was collected from Mr. Parrish's final paycheck, which leaves a balance due of \$21,225.61.

payment more than his proper entitlements. See, Frederick D. Crawford, 62 Comp. Gen. 608, 610 (1983), and cases cited.

In this case, the facts concerning what steps Mr. Parrish took to ascertain whether his pay was subject to an annuity reduction are unclear. While Mr. Parrish states that at the outset of his employment with GSA, he wrote to the GSA Personnel Office to ask whether his part-time position with GSA would jeopardize his retirement election, GSA states that the agency never received such a letter from Mr. Parrish.

As to Mr. Parrish's conversation with the OPM Personnel Information Specialist, when she reportedly told him that his pay as a temporary employee was not subject to an annuity reduction, he acknowledges that she referred him to FPM Supplement 831-1, subchapter 15, which provides that the annuity offset applies whatever the type of appointment. According to Mr. Parrish, she did not read the regulation to him, nor did he have ready access to it.

Mr. Parrish states that he wrote to his supervisor asking her to look into the matter for him. While he and two coworkers state that Mr. Parrish's supervisor confirmed that his pay was not subject to the deduction, the record contains a statement from the supervisor attesting that she does not recall ever having a conversation with or receiving correspondence from Mr. Parrish concerning an annuity he was receiving from previous federal employment. There is also a statement from Mr. Parrish's former Maintenance Mechanic Foreman that he does not recall ever discussing Mr. Parrish's retirement annuity with him either.

After a full review of the case, GSA has recommended against waiver on the basis that Mr. Parrish did not pursue the matter adequately in that he failed to follow through on his inquiries concerning possible overpayment.

Accordingly, collection would not be against equity and good conscience nor contrary to the best interests of the United States. We affirm the Claims Group's settlement.

Comptroller General
of the United States