



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jonathan C. Pick
File: B-256262
Date: April 25, 1994

DIGEST

A civilian employee who was called to active duty in connection with Operation Desert Shield/Storm and who was not entitled to receive civilian pay during that period, erroneously received his civilian salary for three successive pay periods by direct deposit to his bank account, and seeks waiver of the resulting debt. Although the employee argues lack of knowledge of these deposits the record shows he had the opportunity to retrieve his mail several times monthly. When he did so, he ignored his bank statements. Had he examined his bank statements he would have been alerted to the possibility of error. Since he failed to do so and make inquiry of an appropriate official at his civilian agency, he is considered to be partially at fault, thereby precluding waiver under 5 U.S.C. § 5584 (1988).

DECISION

This decision is in response to an appeal from our Claims Group's settlement Z-2917549, Oct. 16, 1992, which denied waiver of part of the debt of Mr. Jonathan C. Pick incident to the overpayment of compensation for a day in January 1991, and the period May 5, 1991-June 15, 1991. We concur with our Claims Group's action for the following reasons.

Mr. Pick is a civilian employee of the Department of the Air Force, stationed at Edwards Air Force Base, California. He is also a member of the United States Air Force Reserve in a flying status. Mr. Pick was ordered to active duty on January 25, 1991, in connection with Operation Desert Shield/Storm and stationed at Norton Air Force Base, California, as an Aircraft Commander with the 729th Airlift Squadron. He was released from that active duty in November 1991, at which time he returned to his civilian position at Edwards Air Force Base.

059899/151554

During the time Mr. Pick was receiving military pay and allowances, he was not entitled to his civilian pay. However, due to administrative error he received civilian pay for January 25, 1991 (the last workday of the pay period). Also due to administrative error, he received civilian pay for three successive pay periods from May 5 through June 15, 1991, for a total overpayment of \$5,170.80.

Our Claims Group waived the overpayment received for January 25 (\$166.80), for the reason that he may not have been aware that he was not entitled to erroneously received salary for that 1 day during that pay period. However, the Claims Group determined that he should have questioned the salary payments (\$5,004) deposited to his bank account in May and June. Since he did not do so, waiver of that amount was denied.

Mr. Pick states that he flew as the aircraft commander of C-141's much of the time he was on active duty and that, when he was not actually flying, he was required to live at Norton Air Force Base because his residence in Lancaster, California, was outside the Norton local area. Since he is single and lives alone with no one other than himself to manage his civilian affairs, and his mail was not being forwarded to Norton, he did not have ready access to his bank statements. Further, such pay statements as he was entitled to receive were delivered to his office at his civilian duty station. According to Mr. Pick, the only thing he knew about his finances was his checking account balance and that information was obtained only through his use of automatic teller machines. In addition, since payment of his military pay was so irregular and in varying amounts, he did not know at any given time how much money should be in his checking account.

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.¹

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 of

¹5 U.S.C. § 5584(b).

²4 C.F.R. § 91.5 (1993).

receiving payment in excess of proper entitlement.³ Generally, if an employee receives documents which would indicate an improper payment and 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.⁴

In the present case, Mr. Pick received three payments of \$1,668 each by direct deposit to his checking account for three successive pay periods in May and June 1991. This was 4 months after his civilian pay was suspended. Although he has argued that his pay statements were delivered to his office at his civilian duty station and, thus, he knew nothing about them, we have been informed by Mr. Pick that he had the opportunity to retrieve his mail several times a month. The primary purpose was to get his bills so he could pay them. In the process he says he ignored his bank statements because he knew he had an adequate balance for check writing. Had he taken the time to look over his bank statements, he would have seen the three extra deposits to his account in amounts approximately equal to his net biweekly civilian pay. Had he done so, he would have been alerted to the possibility that the deposits were improper, at least sufficiently so to cause him to contact appropriate agency personnel at Edwards Air Force Base to question the payments.

Since he failed to take any action regarding his bank statements, he must be deemed partially at fault in the matter. Accordingly, the action taken by our Claims Group denying waiver of the larger part of Mr. Pick's debt is sustained.

Robert P. Murphy

Robert P. Murphy
Acting General Counsel

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

⁴David J. Rendon, 68 Comp. Gen. 573 (1989), and decisions cited. See also, Frank A. Ryan, B-218722, Dec. 17, 1985; Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988; and John J. Williams, B-251667, Apr. 2, 1993.

ROUTING SLIP

Problem Form No. _____

- Form 48
- Form 115
- Form 103
- Issue Area
- Intent Code
- Budget Function
- Other

TAN: 059839

DATE: 5/6/94

Recommendations

1st Catalog Sof 5-6	Index Sof 5-12
Initial Q.C. DM 5-6 DC	Abstract Sof 5-12
2nd Catalog Sof 5-12	Final Q.C.

Reidinger



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jonathan C. Pick
File: B-256262
Date: April 25, 1994

DIGEST

A civilian employee who was called to active duty in connection with Operation Desert Shield/Storm and who was not entitled to receive civilian pay during that period, erroneously received his civilian salary for three successive pay periods by direct deposit to his bank account, and seeks waiver of the resulting debt. Although the employee argues lack of knowledge of these deposits the record shows he had the opportunity to retrieve his mail several times monthly. When he did so, he ignored his bank statements. Had he examined his bank statements he would have been alerted to the possibility of error. Since he failed to do so and make inquiry of an appropriate official at his civilian agency, he is considered to be partially at fault, thereby precluding waiver under 5 U.S.C. § 5584 (1988).

DECISION

This decision is in response to an appeal from our Claims Group's settlement Z-2917549, Oct. 16, 1992, which denied waiver of part of the debt of Mr. Jonathan C. Pick incident to the overpayment of compensation for a day in January 1991, and the period May 5, 1991-June 15, 1991. We concur with our Claims Group's action for the following reasons.

Mr. Pick is a civilian employee of the Department of the Air Force, stationed at Edwards Air Force Base, California. He is also a member of the United States Air Force Reserve in a flying status. Mr. Pick was ordered to active duty on January 25, 1991, in connection with Operation Desert Shield/Storm and stationed at Norton Air Force Base, California, as an Aircraft Commander with the 729th Airlift Squadron. He was released from that active duty in November 1991, at which time he returned to his civilian position at Edwards Air Force Base.

059890/151554

During the time Mr. Pick was receiving military pay and allowances, he was not entitled to his civilian pay. However, due to administrative error he received civilian pay for January 25, 1991 (the last workday of the pay period). Also due to administrative error, he received civilian pay for three successive pay periods from May 5 through June 15, 1991, for a total overpayment of \$5,170.80.

Our Claims Group waived the overpayment received for January 25 (\$166.80), for the reason that he may not have been aware that he was not entitled to erroneously received salary for that 1 day during that pay period. However, the Claims Group determined that he should have questioned the salary payments (\$5,004) deposited to his bank account in May and June. Since he did not do so, waiver of that amount was denied.

Mr. Pick states that he flew as the aircraft commander of C-141's much of the time he was on active duty and that, when he was not actually flying, he was required to live at Norton Air Force Base because his residence in Lancaster, California, was outside the Norton local area. Since he is single and lives alone with no one other than himself to manage his civilian affairs, and his mail was not being forwarded to Norton, he did not have ready access to his bank statements. Further, such pay statements as he was entitled to receive were delivered to his office at his civilian duty station. According to Mr. Pick, the only thing he knew about his finances was his checking account balance and that information was obtained only through his use of automatic teller machines. In addition, since payment of his military pay was so irregular and in varying amounts, he did not know at any given time how much money should be in his checking account.

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.¹

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 of

¹5 U.S.C. § 5584(b).

²4 C.F.R. § 91.5 (1993).

receiving payment in excess of proper entitlement.³ Generally, if an employee receives documents which would indicate an improper payment and 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.⁴

In the present case, Mr. Pick received three payments of \$1,668 each by direct deposit to his checking account for three successive pay periods in May and June 1991. This was 4 months after his civilian pay was suspended. Although he has argued that his pay statements were delivered to his office at his civilian duty station and, thus, he knew nothing about them, we have been informed by Mr. Pick that he had the opportunity to retrieve his mail several times a month. The primary purpose was to get his bills so he could pay them. In the process he says he ignored his bank statements because he knew he had an adequate balance for check writing. Had he taken the time to look over his bank statements, he would have seen the three extra deposits to his account in amounts approximately equal to his net biweekly civilian pay. Had he done so, he would have been alerted to the possibility that the deposits were improper, at least sufficiently so to cause him to contact appropriate agency personnel at Edwards Air Force Base to question the payments.

Since he failed to take any action regarding his bank statements, he must be deemed partially at fault in the matter. Accordingly, the action taken by our Claims Group denying waiver of the larger part of Mr. Pick's debt is sustained.

 *Robert P. Murphy*

Robert P. Murphy
Acting General Counsel

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

⁴David J. Rendon, 68 Comp. Gen. 573 (1989), and decisions cited. See also, Frank A. Ryan, B-218722, Dec. 17, 1985; Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988; and John J. Williams, B-251667, Apr. 2, 1993.