



Decision

Matter of: Terry R. Allison, et al. - Waiver - Shift
Differential Overpayments
File: B-256934
Date: September 20, 1994

DIGEST

Five employees request waiver of erroneous payments because the agency allegedly failed to give them timely notice of the error. The request is denied because the employees knew or had reason to know of the error before the agency formally notified them of the error. In such cases, collection of the overpayment is not considered to be against equity, good conscience, or in the best interest of the United States, notwithstanding the fact that the employees may have brought the situation promptly to the attention of the proper authorities and sought an explanation or correction of the error.

DECISION

Five employees¹ of the Bureau of Reclamation, Department of Interior, appeal our Claims Groups settlements denying their requests for waiver of debts arising from overpayments of pay they received in 1992. We affirm the settlements.

Due to an administrative error, 17 Bureau employees stationed at three different facilities were paid incorrect shift differentials in varying amounts, most of which were less than \$50 per pay period, for pay periods (PP) 15 (June 28-July 11, 1992) through 23 (October 18-31, 1992). According to the agency report to the Claims Group, the unexplained increase in pay prompted several inquiries from the employees almost immediately. However, initially the agency found no error and, according to the employees, so advised them. The agency did not determine that an error was made and the exact nature of the error until PP 18

¹The five employees, and the amount for which each seeks waiver, are: George Prough, \$142.09; David C. Burge, \$200.08; Douglas E. Minium, \$153.09; Terry R. Allison, \$138.63; and Paul E. Dutrisac, \$151.79.

(August 9-22, 1992), after the employees and their supervisor pursued the matter further. The report adds that the supervisors of all of the affected employees verbally notified the employees of the error by PP 18. Based on this information, the agency waived collection of overpayments accruing between PP 15-19, and billed the employees for the remaining debt.

The five employees who are the subject of this decision all work at the Black Canyon Dam. They appealed to our Claims Group asserting that the overpayments received for PP 19-23 also should be waived because these five employees did not receive official notice of the error until they were presented with the final bills for the overpayments. Upon review of the entire record, the Claims Group concluded that the record supported the agency's assertion that the agency notified the employees of the error during PP 18. Accordingly, the employees' appeals were denied based on the well-established rule that an employee who accepts payments known to be erroneous cannot reasonably expect to retain them. Martha C. Barrios, B-245449, Nov. 26, 1991.

In their request for reconsideration, the employees assert that the official who notified headquarters personnel that all 17 employees had been verbally notified about the error works at a different facility and was not in a position to know when they were actually notified. Further, they assert that their immediate supervisors did not personally notify them of the error, but only provided "rumors," and they were not notified until April 1993 at a meeting held for this purpose when they were furnished letters stating their indebtedness.

According to the agency's internal Report of Investigation, the five employees first brought notice of the overpayments to their supervisor, who then notified their timekeeper. In a statement dated June 30, 1994, which was submitted with the request for reconsideration, the timekeeper stated that the employees "were very quick and honest to point out the fact they were receiving too much money." She also states that she made several calls to higher levels attempting to have the matter corrected, but was repeatedly told that there was nothing wrong, and nothing she needed to do. As noted, it was not until August 1992 that the agency discovered what the problem was, and correction was not made until October 1992.

The record, however, includes a July 19, 1993 memorandum from the employees's supervisor to his supervisor stating, "You are correct in the belief that the operators most likely knew about the overpayments before P.P. #18. I feel that we notified the operators of the cause, verbally, about P.P. #18" [August 1992]. However, in the memorandum, the

supervisor acknowledges that he did not keep accurate records and that he was not sure exactly when the operators were told of the problem.

OPINION

The Comptroller General may waive claims for overpayments of pay if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good faith by the employee, 5 U.S.C. § 5584 (1988). In this case, the agency determined that the overpayments were initiated by an administrative error by the agency, and there is no indication in the record that the error was caused by any fraud, misrepresentation, fault or lack of good faith by the five employees.

As noted, when the overpayments began, the employees thought something was wrong with their pay and promptly brought the matter to the attention of their supervisors and timekeeper. However, after several attempts by the timekeeper to ascertain what was the problem, they were told that higher levels found no problem, at least this was what they were told until August 1992 (PP 18), when the agency found the error. On this basis their debts were waived for amounts received through PP 18.

Although they may not have had written notice of the source of the error or the exact amount, the record is sufficient to conclude that by PP 18 they were aware that they were being paid too much and that some form of adjustment would be necessary. While it is not clear why the overpayments continued through October 1992, when the agency discovered the problem with the shift differentials in August, the agency report indicates that the employees were orally advised in August of the problem with the differentials. While, as the employees state, they may not have been officially advised in writing of their debts until the meeting in April 1993, we think the record supports the agency's position that by PP 18 the employees knew that the agency had confirmed what the employees had thought earlier, i.e., that they were being overpaid. Once an employee is on notice that he is receiving erroneous payments he must expect that refund will be required upon correction of the error. See Beatrice M. Lansdown,

B-201815, Mar. 25, 1981. Therefore, collection of the overpayments in this case would not be against equity and good conscience and would be in the best interests of the United States.

Accordingly, the Claims Group's settlements are affirmed.

Robert P. Murphy
Acting General Counsel

Date:

To: Director, Claims Group/OGC - Sharon S. Green

From: Acting General Counsel - Robert P. Murphy

Subject: Requests for Waiver - Terry R. Allison, Z-2926457;
Douglas C. Minium, Z-2925568; David C. Burge,
Z-2925539; Paul E. Dutrisac, Z-2926458; George M.
Prough, Z-2925538. (B-256934-O.M.)

We are returning the above-captioned files. By our decision, dated today, we have affirmed the Claims Group's denial of waiver in these cases.

Attachments - 5

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DECISION DISTRIBUTION FORM

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<p>4. Publication Recommended? No</p>		
<p>5. Special Instructions: This decision covers cases B-256934.1-.5.</p> <p>Digest is <input type="checkbox"/> in not <input type="checkbox"/> included</p>		<p>6. If <u>Delayed</u>, this document will be available for General Distribution (complete with pen and ink)</p> <p>Days after issuance <input type="checkbox"/> When Notified by OGC or OCR</p>

SECTION II: INITIAL DISTRIBUTION

<p>Mr. Terry Allison 803 Davis Avenue Tampa, ID 83651</p>	<p>Mr. David Burge 2590 Substation Road Emmett, ID 83617</p>
<p>Mr. Douglas Minium 2538 Waterwheel Road Emmett, ID 83617</p>	<p>Mr. George Prough 820 E. 7th Street Emmett, ID 83617</p>
<p>Mr. Paul E. Dutrisac P.O. Box 651 Emmett, ID 83617</p>	<p>U.S. Department of the Interior Bureau of Reclamation P.O. Box 25007 Building 67, Denver Federal Center Denver, Colorado 80225-0007</p>
<p>Ms. Barrett, OGC - 2 copies</p>	<p>Paul Britner, OGC</p>

United States General Accounting Office

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Action Routing Slip

B-256934

Name	Date	Name	Date
1. Mr. Britner		6.	
2. Mr. Engstrom		7.	
3. Mr. Dodge		8.	
4. Mr. Efos		9.	
5. Mr. Murphy		10. LSSB--Outgoing	

Remarks

DECISION: Terry R. Allison, et. al.

MEMO to Claims Group/OGC