



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harold S. Hoffman - Reemployed Annuitant - Waiver of Salary Overpayment

File: B-257886

Date: January 25, 1995

DIGEST

A reemployed annuitant's pay upon entry on duty was substantially reduced as a result of his receipt of a retirement annuity. However, since he was not counseled to furnish his payroll office notices of annual cost-of-living increases to his annuity, which should have resulted in increased reductions from his salary, he received salary overpayments over a 10-year period. He states that he assumed current information as to the amount of his annuity was being furnished to his agency by the Office of Personnel Management and was not aware he was being overpaid. He is found not to be at fault, and the amount of his debt that accumulated before he received notice of the overpayments is waived, since based upon the instructions and documents he received, the payroll errors were not readily apparent.

DECISION

Mr. Harold S. Hoffman, a retired employee reemployed by the Air Force, has appealed our Claims Group's settlement¹ which upheld the Defense Finance and Accounting Service's (DFAS) denial of Mr. Hoffman's request for waiver of the major portion of his indebtedness which arose from overpayments of pay he received. His debt, which accrued over approximately 10 years, began when the Air Force miscalculated the amount, by \$1.60 per pay period, it was required to withhold from his pay due to his receipt of a retirement annuity. In addition to this initial error, the Air Force failed to increase the withholding to adjust for the annuity's annual cost-of-living-increases. The debt eventually totalled \$14,852.80 before the errors were discovered and corrections made to the payroll deductions.

In view of additional information and a changed recommendation we received from the Air Force, we now find that waiver may be granted for the part of the debt that accumulated before Mr. Hoffman was notified of the errors since, based upon the instructions and documents he received, the errors were not readily apparent.

¹Z-2926564-050, June 8, 1994.

BACKGROUND

The record shows that in September 1982 Mr. Hoffman retired, and effective November 9, 1982, he was appointed as a reemployed annuitant at grade GS-13, step 10. The SF 50 Notification of Personnel Action form the Air Force furnished to Mr. Hoffman at that time stated that his salary would be reduced by the amount of his retirement annuity "and by future cost of living increases", and that his annuity was then \$788.03 per month.

Since Mr. Hoffman's salary was to be paid biweekly, the agency was required to allocate his monthly annuity to biweekly amounts to be deducted from his pay each pay period.² The agency's payroll section made an error in the allocation of the annuity to the biweekly pay period, and began withholding \$362.40 each pay period to account for the annuity, although the correct deduction should have been \$364. In April of 1983 Mr. Hoffman's annuity received a cost-of-living increase which should have been reflected in an additional \$16 deduction to total \$380 per pay period. However, the amount withheld per pay period remained at \$362.40, and remained at that amount throughout the approximate 10-year period although each year the annuity was increased by a cost-of-living increase.³

On July 2, 1992, Mr. Hoffman's payroll section informed him of the errors in not adjusting the deductions from his pay to account for the cost-of-living increases in his annuity and that, as a result, he was in debt for \$14,450.40. Later in July Mr. Hoffman submitted a request for waiver of the debt, but it was not until December of 1992 that the Air Force made corrections in the SF 50's and payroll deductions, and overpayments made during these 6 months increased the total amount of the debt to \$14,852.80.

DFAS denied the request for waiver on February 4, 1994, and Mr. Hoffman appealed the denial. DFAS transmitted the appeal to our Claims Group, which on June 8, 1994, waived \$16 of the debt covering the time period from Mr. Hoffman's initial appointment until the first cost-of-living adjustment to his annuity during which he was overpaid \$1.60 per pay period as a result of the agency's erroneous initial allocation of the annuity. The Claims Group denied waiver of the remainder of the debt, finding that he was aware that his salary was to be reduced by the amount of his annuity and future cost-of-living increases, and when his salary was not reduced for the cost-of-living increases he should have brought this to the agency's attention, which he did not do.

²Pursuant to 5 U.S.C. § 8344(a), an "amount equal to the annuity allocable to the period of actual employment" was required to be deducted from his pay.

³Mr. Hoffman was initially appointed as an intermittent employee and apparently did not work a full-time schedule during his first year. Thereafter, he received an annual, one-year appointment, which was extended until 1987, when he was appointed without a term limit.

On June 15, 1994, Mr. Hoffman appealed the action of the Claims Group through DFAS, and submitted additional documents to support his request for waiver. By letter of July 12, 1994, DFAS advised us that after reviewing the documents Mr. Hoffman provided they reconsidered their previous recommendation against waiver and now recommend that the full debt be waived. They note in particular that the SF 50's that Mr. Hoffman had been receiving over the years did not include annuity information like the information provided by the SF 50 he received upon appointment in 1982.

OPINION

Pursuant to 5 U.S.C. § 5584, and the implementing Standards for Waiver, 4 C.F.R. Part 91, waiver may be granted in a case such as this if the erroneous payments occurred through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. In Mr. Hoffman's case neither the Air Force nor we found an indication of fraud, misrepresentation or lack of good faith on his part.

As to fault, it is imputed when an employee receives a significant unexplained increase in pay, or otherwise knows or reasonably should know that an erroneous payment has occurred, and fails to bring the matter to the attention of the appropriate officials. We have repeatedly held that where an employee is furnished documents, such as leave and earnings statements, which if reviewed would indicate to a reasonable person the likelihood of error, and he or she does not alert responsible officials, he or she is considered at least partially at fault in the matter. See e.g., Frederick D. Crawford, 62 Comp. Gen. 608 (1983).

Mr. Hoffman states, and the Air Force agrees, that he was not counseled as to any particular responsibility he had as a reemployed annuitant to report each annuity increase to the personnel or payroll section so it could be translated into salary deductions. He states that he assumed the annuity information would be provided by the Office of Personnel Management (OPM) to the Air Force and the correct deductions would be taken care of by the Air Force, and he had no knowledge that underdeductions were occurring. In this regard, the Federal Personnel Manual (FPM) Supplement then in effect required only that the employee provide correct information about his annuity to his agency upon employment, as was done in Mr. Hoffman's case. The agency was then required to notify OPM, calculate the allocation of the annuity to biweekly amounts to be deducted from Mr. Hoffman's salary, and receive and execute instructions from OPM, which were provided by OPM in FPM Bulletins, about how to calculate the periodic increases in deductions due to increases in the annuity.

Concerning the documents that were furnished to Mr. Hoffman during the period in question, it appears that his leave and earnings statements (LES's) showed no specific deduction from his salary for his retirement annuity even though other deductions such as taxes and insurance were specified. The LES's did show his annual base pay rate and his total earnings for the pay period. The total earnings figure appears to have been derived

by first deducting the retirement annuity allocation from his gross pay for the pay period; however neither gross pay for the pay period (annual rate allotted to 26 pay periods) nor the amount deducted for the annuity was shown on the LES.⁴ Thus, based on this information, for Mr. Hoffman to determine the amount being deducted for his retirement annuity, it would have been necessary for him to perform a calculation to transform the gross annual salary amount shown on the LES to a biweekly amount by dividing it by 26, and from this amount, subtract the amount shown as earnings for the pay period (prior to deductions for taxes, insurance, etc.). To determine whether the amount thus derived was consistent with the amount of his retirement annuity, he would have had to convert the amount of his monthly annuity into an annual amount by multiplying it by 12. He could then compare that amount to the annual amount being deducted from his pay by multiplying the biweekly amount (derived from the initial calculation) by 26. Apparently he did not make these calculations since he states he relied on the agency's deductions as being correct.

Concerning the SF 50's Mr. Hoffman received over the years documenting pay changes, as noted above, the first SF 50 notified him that his salary would be reduced by the amount of his annuity and stated the monthly amount of his annuity. Only one of the succeeding SF 50's he received over the years indicated the amount of Mr. Hoffman's annuity.⁵ But the other information they did show was consistent with that shown on his LES's. These factors caused DFAS to reverse its original recommendation to deny waiver.

⁴The LES's also showed the net pay amount derived by subtracting the specified deductions (taxes, insurance, etc.) from the earnings for the pay period figure.

⁵The record contained one SF 50, not specifically addressed by DFAS, that succeeded Mr. Hoffman's original appointment document and did indicate the amount of his annuity. It reflected Mr. Hoffman's appointment, effective October 3, 1983, after he was involuntarily terminated on September 29 to meet end-of-year personnel ceiling requirements. It was nearly identical in format to the original appointment SF 50, but it indicated the same annuity figure of \$788.03 per month as the original, and it also indicated that Mr. Hoffman had been "previously employed at GS-13, step 10, \$43,666 PA." Since Mr. Hoffman should have received notice of a cost-of-living increase to his annuity by OPM sometime around March 1983, perhaps he should have noticed a conflict between that figure and the lower, superseded figure on his October 1983 SF 50. However, since the previously employed pay rate of \$43,666 on the October 1983 SF 50 was the rate of Mr. Hoffman's pay when he retired, rather than his rate when he was appointed in November 1982, those two items of information on the October 1983 SF 50 give the appearance of being essentially historical information relating back to his retirement, rather than current information like the other items on the October 1983 SF 50.

Our Claims Group, when it denied waiver in June 1994 of the overpayments received after the first annuity increase, focused on the fact that Mr. Hoffman knew his salary should be reduced by increases in his annuity, and stated that he should have specifically questioned the fact that the amount being offset from his civilian salary remained the same. Upon consideration of the information provided in Mr. Hoffman's appeal and DFAS's changed recommendation in favor of waiver, we reach a different conclusion. It is now our view that based on the documents Mr. Hoffman received, it is clear that a substantial deduction was being made from his salary, which he knew was due to his receipt of an annuity, but it was not readily apparent that the deduction was not being increased due to cost-of-living increases in the annuity. No document showed the actual amount of Mr. Hoffman's annuity deduction, and the gross salary amount from which the annuity deduction was being subtracted changed at various times over the years because of periodic pay raises and bonuses. The SF 50's showed at least 11 pay increases and other corresponding changes from intermittent to full-time employment. Also, the increases in deductions which should have occurred due to increases in the annuity, at least initially, were small (beginning at \$16) and increased incrementally over the years, so they were not readily noticeable. Thus, without performing the detailed calculations described above, it does not appear that he would be aware that the amounts that were being withheld from his salary due to his annuity were erroneous.

As a general rule, waiver will be denied for reemployed annuitants who have LES's or other documents that if carefully examined would show that substantial underdeductions are being made for the annuity. Edward E. Wolfe, B-204973, Mar. 4, 1982. However, where the underdeduction is not readily ascertainable we have granted waiver. See Hilda M. Rapp, B-253937, Mar. 2, 1994. In that case, which involved a situation very similar to Mr. Hoffman's, the employee also received an initial form 50 which stated that her salary would be reduced by the amount of her annuity and future cost-of-living increases. The agency began making the correct deductions but did not increase the amount of deductions to account for cost-of-living increases even though the employee furnished the information each year to the personnel specialist who forwarded it to the agency's payroll department. The leave and earning statements in that case were apparently nearly identical to the ones in this case. We concluded in that case that the documents did not readily indicate the error that was occurring, and we stated that since "in fact her pay was substantially reduced, and that when the under reductions were made she was also entitled to and expected general pay increases, we do not think she was at fault in not noticing the errors."

Although Mr. Hoffman did not furnish information as to his annual annuity increases to the Air Force because he was not counseled or otherwise required to do so, he was in a similar situation as the employee in the Rapp case in not noticing the errors in the deductions for his retirement annuity.

Accordingly, we hereby waive the claim of the United States against Mr. Hoffman for the erroneous payments of salary he received as a result of the underdeductions for the retirement annuity he received for the period from the time of the first cost-of-living

increase in his annuity in April 1983 through July 2, 1992, when he was notified that the deductions were erroneous.⁶ The overpayments he received after July 2, 1992, until the errors were corrected in December 1992 may not be waived, and denial of waiver of those amounts is sustained.⁷

Robert P. Murphy
General Counsel

⁶Our Claims Group previously waived the claim of the United States (\$16) for the period from the time of appointment until April 1983.

⁷Mr. Hoffman may not reasonably expect to retain overpayments he received after being notified of the error but before correction was made in the payroll system. See Hernian T. Winston, B-255550, Feb. 25, 1994.