



Comptroller General
of the United States

Washington, D.C. 20548

153999

Decision

Matter of: Anthony Sideris--Waiver Request--Reconsideration

File: B-259124

Date: February 23, 1995

DIGEST

Due to administrative error, an agency erroneously paid an employee an overseas post allowance. Because a similarly situated coworker was not receiving the allowance, the employee questioned his personnel office as to his entitlement to the allowance, and he was advised that he was so entitled. However, because of his continued doubt, the employee pursued the matter and later was told by personnel in the State Department that he was not entitled to the allowance. Nonetheless, he continued to receive the allowance for several more pay periods before the error was corrected. Waiver of his debt was properly limited to erroneous payments received before the State Department notified him of the error, and waiver of the subsequent erroneous payments was properly denied. Even though the employee received contradictory answers to his inquiries, when he received the State Department's advice, he was on notice of a possible error, and he should have set aside the questionable payments until the matter could be officially resolved.

DECISION

Mr. Anthony Sideris requests reconsideration of Claims Group settlement Z-2926427, March 8, 1994, to the extent it partially denied waiver of his indebtedness of \$3,645.60 arising from erroneous payments of post allowances he received while assigned to the Naval Investigative Service Resident Agency, Souda Bay, Crete, Greece. We affirm the Claims Group's action.

BACKGROUND

According to the record, Mr. Sideris reported to his assignment at Souda Bay in February 1992, and beginning May 17, 1992, the agency began erroneously paying him a post allowance which continued through October 31, 1992. Mr. Sideris states that when he first began receiving the additional amount he was aware that his pay included a large unexplained increase which he determined was due to the addition of a post allowance in his pay. He further states that in early June he brought this matter to the attention of the Consolidated Civilian Personnel Office in Naples, Italy, by telephone, but the personnel specialist to whom he spoke assured him that he was entitled to the post allowance. However, because a similarly situated employee was not receiving this allowance, he pursued the matter further by contacting the State Department Personnel Office in Athens, Greece, which informed him that civilian employees stationed in Greece were not entitled

to a post allowance.¹ Mr. Sideris then brought the matter to the attention of his agency and asked them to resolve the matter. It was not until November 1992, that the matter was finally corrected, and the agency officially notified him in writing that he was not entitled to the allowance and that he was indebted for the resulting erroneous payments in the total amount of \$3,645.60.

The agency recommended approving waiver of the erroneous payments Mr. Sideris received before he received the advice from the State Department Personnel Office in mid-July that he was not entitled to a post allowance, but denying waiver for the subsequent erroneous payments. The Claims Group agreed with the agency, and waived collection of the erroneous amounts he received through mid-July, \$1,215.20, and denied waiver of the remainder, \$2,430.40.

In his request for reconsideration, Mr. Sideris disputes the finding that the State Department's July 1992, response to his inquiry constitutes notice of the error so as to preclude waiver. He states that this answer left him "more confused." Mr. Sideris asserts he should not be considered to have received notice of the error until he received formal, written notice from his agency in November 1992.

OPINION

The Comptroller General may waive claims for erroneous payments 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 erroneous payments resulted from an administrative error and that there was no fraud, misrepresentation, fault, or lack of good faith on Mr. Sideris's part.

As our Claims Group noted, however, employees who suspect errors in their pay are expected to bring the matter to the attention of responsible officials and to set aside the questionable payments for eventual refund when the matter is resolved. Terry R. Allison, et al., B-256934, Sept. 20, 1994; Richard W. DeWeil, B-223597, Dec. 24, 1986. Employees who receive informal notice of an error likewise are expected to set aside the questionable payments until the matter can be officially confirmed, and collection of such

¹The duty stations for which post allowances are authorized are published in section 920 of the State Department's Standardized Regulations (Government Civilian, Foreign Areas) which provided no post allowances for any duty stations in Greece.

overpayments is not considered contrary to the best interests of the United States or against equity and good conscience. Sandra L. Geer, B-243686, July 2, 1991. We have applied this principle even when the cause of the error or the exact amount of the erroneous payment has not been determined. Allison, *supra*.

In this case, Mr. Sideris acted as a responsible employee is expected to do and promptly brought the questionable payments to the attention of his personnel office, which erroneously advised him he was entitled to the allowance. However, because of his continuing doubts due to his coworker not receiving the allowance, he queried the State Department in July and was told he was not entitled to the allowance. While he argues that this contradictory advice left him confused until the matter was finally, formally resolved in November, clearly as of the time he received the State Department's advice in July, he knew his entitlement was in question, and he should have set aside the payments for possible refund once the matter was officially resolved. Thus, we agree with the agency and the Claims Group that at that point he was clearly on notice that he may be required to refund the extra pay.

Accordingly, the erroneous payments Mr. Sideris received after receiving the State Department's advice in July may not be waived, and the Claims Group settlement is affirmed.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel