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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Billy P. Clayton

**File:** B-260912

**Date:** October 17, 1995

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## DIGEST

A transferred employee was overpaid salary because his interim "locality pay" salary increase at his old duty station was erroneously continued at his new station. The employee was immediately notified upon discovery of the error; however, the adjustment/correction was not made for approximately 6 months. Waiver of the debt prior to notice was granted, but denied for the period following notice. The employee seeks waiver of the remaining debt, arguing that the overpayment resulted from administrative error over which he had no control and that he cannot afford to repay the money. Waiver of the remaining debt is denied. Since the employee accepted payments known to be erroneous, he should have made provision for eventual repayment. Financial hardship cannot establish a basis for waiver.

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## DECISION

Mr. Billy P. Clayton, an employee of the Department of State, appeals our claims settlement, Z-2927436, Sept. 30, 1994, which disallowed waiver of part of his debt to the United States for salary overpayments. We sustain the disallowance for the following reasons.

Briefly, the facts are that when Mr. Clayton was transferred from New York, New York, to Seattle, Washington, in January 1992, his special New York interim geographic salary increase of 8 percent was erroneously continued. Although the error was discovered in November 1992 and he was notified of the error by letter dated November 13, 1992, the adjustment/correction was not made until May 3, 1993. It was thereafter determined that he had been overpaid \$3,450.40 during the period January 12, 1992, through May 3, 1993.

Based on the investigation and recommendation of the Office of Compensation and Pension, Department of State, we waived \$2,083.20 of the debt, representing the salary overpayment for the period January 12 through November 13, 1992, the date he was notified of the error, and we denied waiver of the overpayment made for the period November 14, 1992, through May 3, 1993, totaling \$1,367.20.

Mr. Clayton has appealed that denial on the basis that, since all of the overpayments were caused by administrative error over which he had no control, he should not be required to repay any part of the overpayments. Further, he claims that he cannot afford repayment because he has already spent the money.

Section 5584 of title 5, United States Code (1994), authorizes the Comptroller General to waive, in whole or in part, claims of the United States against employees for overpayments of pay when 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 on the part of the employee. In the present case, the agency determined the overpayments were due to administrative error and that there is nothing to suggest that the error was induced by Mr. Clayton. Notwithstanding that, the record shows that he was notified that he was being overpaid on November 13, 1992.

We have held that an employee who is on notice of an overpayment of pay and who thereafter accepts payments known to be erroneous cannot reasonably expect to retain them and should make provision for eventual repayment.<sup>1</sup> We have also held that financial hardship does not provide a basis to grant waiver of an indebtedness.<sup>2</sup> In view thereof, recovery of the overpayments made to Mr. Clayton after November 13, 1992, is not against equity and good conscience nor contrary to the interests of the United States. Accordingly, we sustain the denial of waiver of \$1,367.20 in Mr. Clayton's case.

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

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<sup>1</sup>Hubert G. Calloway, B-257971, Mar. 3, 1995, and decisions cited.

<sup>2</sup>Dr. Joella Campbell, B-259660, June 8, 1995, citing to David L. Williams, 70 Comp. Gen. 699 (1991).