



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Eric A. Werner

File: B-261294

Date: October 31, 1995

DIGEST

An employee was transferred to an overseas location and began to receive a post differential allowance, but at an incorrect rate, resulting in an overpayment of the allowance. Partial waiver was granted for the period prior to the date that a fellow employee wrote to the agency on behalf of both of them inquiring about the propriety of the allowance being paid. The employee appeals the partial waiver disallowance, arguing that he did not know of the overpayment until so notified by the agency. The appeal is denied. The employee knew or should have known at the time the letter was sent that the allowance being received was at the incorrect rate. Therefore, collection of the debt for the period after the date of the letter is not against equity and good conscience and is in the best interest of the United States.

DECISION

Mr. Eric A. Werner, an employee of the Defense Mapping Agency, appeals Settlement Z-2927892, Dec. 13, 1994, which disallowed waiver of part of his debt to the United States for salary overpayments. The partial waiver disallowance is sustained, for the following reasons.

The reported facts are that Mr. Werner was transferred to a duty station on Kwajalein Atoll, Marshall Islands (Atoll), in March 1992 and became entitled to a post differential allowance. Because of administrative oversight by the Directorate of Human Resources, Defense Mapping Agency, the allowance paid him beginning March 27, 1992, was at the outdated rate of 15 percent of base salary instead of the correct rate of 10 percent of base salary, which rate became effective on March 22, 1992.

The agency states that it was unaware of the change in the post differential allowance at the time Mr. Werner was transferred, and its Directorate of Human Resources did not learn of the change until September 22, 1993, when it received a reply from the Department of State incident to its inquiry in late August 1993. On

November 2, 1993, the agency forwarded revised copies of the Standard Form 1190, "Foreign Allowance Application, Grant, and Report," to Mr. Werner and others stationed on the Atoll for their review and signature. On November 13, 1993, Mr. Werner returned his signed copy of the form to the agency and it became effective on December 3, 1993.

An agency investigating officer determined that Mr. Werner was overpaid a total of \$3,480.02 for the period March 22, 1992, through December 2, 1993. In his report dated July 27, 1994, the investigating officer recommended that the amount overpaid him for the period ending October 2, 1993 (\$3,136.88), be waived, asserting that because Mr. Werner had been notified of the overpayment during the pay period ending October 2, 1993, the overpayment from October 3, 1993, through December 2, 1993 (\$343.14), should be processed for collection.

By letter dated November 21, 1994, addressed to this Office, the Acting Comptroller of the Defense Mapping Agency generally concurred in the recommendation that partial waiver be granted, but identified the time that Mr. Werner became aware of possible error as being not later than August 16, 1993. This recommendation was based on the fact that another employee (Bruce Hanson), stationed on the Atoll, wrote a letter to the agency at that time requesting verification of the correct post differential rate. Based on the latter recommendation, this Office waived that part of the debt (\$2,841.62) which arose prior to August 16, 1993, and disallowed waiver of the debt (\$638.40), for the period thereafter.

Mr. Werner has appealed that action, arguing that, although he was aware of the letter sent to the Directorate of Human Resources, he was not aware that the post differential had been decreased. He states that he had heard rumors that the allowance had been increased and it was for that reason that the letter was sent. He contends that he did not know that the post differential rate was reduced until the agency letter of November 2, 1993, was received and he signed and returned the revised Standard Form 1190 on November 13, 1993.

Waiver of a debt under 5 U.S.C. § 5584 (1994) is an equitable remedy to be granted as a dispensation from the requirement of having to repay money received by an employee as a result of administrative error. Because of its equitable nature, the grant of waiver depends 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 knew or in the exercise of reasonable diligence should have known that an error was made and failed to take corrective action. The standard employed is

¹4 C.F.R. § 91.5 (1994).

whether a reasonable person should have been aware that he/she was receiving payment in excess of his/her proper entitlement.² While notification of possible payment error to the employee by his agency is always an operative event after which erroneous payments received by the employee are to be repaid,³ we have held that where the record suggests that the employee was or should have been aware of possible error at a date earlier than the notice by the agency, that earlier date becomes the date after which erroneous payments received are to be repaid and it is not against equity and good conscience to collect those overpayments.⁴

In the present case, Mr. Werner admits that he knew about the August 16, 1993, letter sent to the agency by Mr. Bruce Hanson⁵ on their behalf. Although Mr. Werner contends that he thought that the post differential allowance had been increased, it is evident that he, Mr. Hanson and others discussed the matter prior to that letter being sent. In view of the tone of that letter wherein it is stated that "in recent months many concerns and questions have been expressed concerning the Post Differential authorized for Kwajalein, Marshall Islands," and "please verify the Percentage rate . . . so this matter can be resolved," we believe that Mr. Werner's assertion is insufficient to establish that he did not know or have reason to believe that he was being overpaid. In the circumstance, collection of the overpayment for the period after August 16, 1993, is not against equity and good conscience and is in the best interests of the United States.

Accordingly, the settlement action previously taken in Mr. Werner's case to deny waiver of his debt for the period beginning on August 16, 1993, is sustained.

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

²George R. Beecherl, B-192485, Nov. 17, 1978.

³Ronald L. Porcella, B-255591, Aug. 10, 1994, citing to Martha C. Barrios, B-245449, Nov. 26, 1991.

⁴Dr. Joella Campbell, B-259660, June 8, 1995, citing to Hawley E. Thomas, B-227322, Sept. 19, 1988. See also Hubert G. Calloway, B-257971, Mar. 3, 1995, and decisions cited.

⁵By decision B-260849, Sept. 19, 1995, Mr. Hanson's request for waiver of the overpayment of the post differential allowance for the same period was allowed, in part, for the period prior to August 16, 1993, and disallowed for the period after that date.