



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-177132

JAN 4 1973

Department of State  
Washington, D.C. 20521

Dear

This is in reference to your letter of July 31, 1972, forwarded here by letter dated August 18, 1972, from Mr. Raymond J. Leffler, Assistant Chief, Central Accounting Division, Office of Financial Management, Agency for International Development, Washington, D.C., in which you request review of the denial of your claim for waiver of overpayment of pay in the gross amount of \$2,398.08 by our Transportation and Claims Division settlement of May 11, 1972.

The indebtedness resulted from overpayment of post differential allowance due to administrative error. The record reflects that you departed your old duty station at Saigon, South Vietnam, pursuant to transfer orders on March 3, 1969, for your home leave address in the United States. At the conclusion of home leave, you were detailed to Santo Domingo, Dominican Republic, for a period not to exceed 90 days and arrived there on May 9, 1969. Upon completion of the detail on August 6, 1969, you departed the Dominican Republic and arrived at your new duty station in Lima, Peru, on August 27, 1969. Your position was that of Budget and Accounting Officer.

While in South Vietnam you received a post differential allowance at the rate of 25 percent of your base pay, which differential should have been terminated on the date of departure. Although you were entitled to a post differential allowance at the rate of 10 percent of your base pay while on detail in Santo Domingo, it was not to commence until June 20, 1969, the forty-third day of your duty at that post. However, through error a 25 percent post differential allowance, as was paid in South Vietnam, was recommended from the beginning of the June 15, 1969 pay period, and a retroactive adjustment made to allow post differential at the 25 percent rate for two prior pay periods, and six days. The error resulted from a memorandum dated June 17, 1969, to the Central Payroll Processing Section signed by your immediate supervisor. The record indicates that this memorandum was the immediate result of an inquiry made by you concerning post differential. The memorandum read as follows:

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"Subject: - Empl. #156128

"Be advised that subject employee arrived at Post on May 9, 1969 and that he has not been paid for Post Differential since his arrival. Please correct same on next Pay Period."

Once started these overpayments continued until December 27, 1969, when the Embassy in Lima requested that the post differential payments be terminated. This request, it appears, resulted from your reporting the incorrect payment of post differential after receipt and examination of your earnings statement. You say that earnings statements were not received by you until late November or early December 1969. An audit revealed an overpayment of \$2,398.08, and collection action was initiated. You requested waiver of collection of the erroneous payment under the provisions of 5 U.S.C. §5584. ✓ Our Transportation and Claims Division denied the waiver request on the basis of employee's fault and concluded that the bank statement reflecting the \$838.41 payment was sufficient notice of a pay irregularity to have caused inquiry by you into the correctness of your pay.

In support of your appeal you deny you had any knowledge of the status of your pay, which was being forwarded directly to a Michigan bank, until the bank statements were brought to you by your wife during her visit to the Dominican Republic in mid-July 1969. The record indicates she arrived there July 12, 1969. While posting receipts in your check register, you recall noticing that four checks for pay periods eight through eleven were in the amount of \$439.92 and one check for pay period twelve was for \$838.41. You further state that the check for pay period thirteen of \$558.79, identical in amount to the last two checks you received in Vietnam at the 25 percent post differential allowance rate, was posted in your check register by your wife and was not seen by you. This, you maintain, refutes our Transportation and Claims Division conclusion that receipt of a check in the same amount as checks received in Vietnam, where the post differential allowance was higher, should have placed you on notice that an error had been made.

Finally, you claim that pay adjustments resulting from your re-assignments and the Federal salary increase of July 1969, during the period when the overpayments began, caused you to be unaware that your pay was incorrect. For these reasons you believe the Government should waive its claim to the overpayment.

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Waiver of indebtedness caused by erroneous payments is governed by 5 U.S.C. §5584(b)(1) which provides in pertinent part:

"(b) The Comptroller General \* \* \* may not exercise his authority under this section to waive any claim--

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim \* \* \*"

Implementing regulations for this statute are set forth in 4 CFR Part 91. Section 91.5 provides in pertinent part:

"\* \* \* Any significant unexplained increase in an employee's pay which would require a reasonable man to make inquiry concerning the correctness of his pay ordinarily would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials.\* \* \*"

Pursuant to the above the standard against which an employee's conduct must be measured is that of the "reasonable man." The issue raised is whether in view of the circumstances you should reasonably have made inquiry concerning your pay as reflected by your bank statements.

It is our view, considering the facts hereinafter related, that you should have made immediate inquiry upon examination of your bank statement in mid-July, which time you say was the first opportunity you had and did review such statements. The bank statements indicated that you had received four payroll checks of \$439.92 each for pay periods eight through eleven, and a fifth check in the amount of \$838.41 for pay period twelve. This fifth check, much greater in amount than previous checks, represents a significant unexplained increase in pay, which would require a reasonable man to make inquiry concerning the correctness of such payment and therefore constitutes sufficient basis to preclude waiver where such inquiry was not made. Although payments covering later pay periods were also erroneous and should have warranted your inquiry, the payment for pay period twelve was sufficient to alert you that an error had been made.

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Under the circumstances it cannot be said that you were without fault in the matter and accordingly, the action by our Transportation and Claims Division in denying your request for waiver of the erroneous overpayment was proper and is hereby sustained.

Sincerely yours,

PAUL G. DEMBLING

Acting Comptroller General  
of the United States