

DECISION

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

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FILE:

DATE: AUG 25 1976

MATTER OF: E-171056

George R. Halpin - Waiver of overpayment of salary

DIGEST:

Waiver is sought under 5 U.S.C. 5534 where employee who was transferred to agency headquarters continued to receive payments for administratively uncontrollable overtime (AUO) which was no longer authorized. Waiver is granted for overpayment where employee notified supervisor and personnel office and was advised that payments were proper. It does not appear that employee should have known AUO terminated upon transfer to headquarters nor does it appear that employee acted unreasonably in relying upon erroneous information provided by officials he presumed were knowledgeable.

This action is in response to the appeal of Mr. George R. Halpin of the determination of our Transportation and Claims Division (now Claims Division), dated February 28, 1973, denying a waiver of erroneous overpayments of overtime pay under the provisions of 5 U.S.C. 5534 (1970).

The record indicates that Mr. Halpin, an employee of the Bureau of Narcotics and Dangerous Drugs (BNDD), now the Drug Enforcement Administration (DEA), was assigned to the San Diego District Office and was authorized and paid administratively uncontrollable overtime (AUO) under 5 U.S.C. 5545 (1970). On April 1, 1971, the employee was promoted and transferred to DEA Headquarters in Washington, D.C. Upon receiving his first paycheck while stationed in Washington, D.C., Mr. Halpin states that he "noted an overpayment with regards to the overtime" and that he so advised his supervisor. At his supervisor's direction, the employee brought the matter to the attention of the Personnel Management Division. He was there advised that the overtime payment was correct and that he would "probably" receive overtime for the remaining quarter (ending June 30). After noting that the overtime payments had continued after July 1, 1971, he again questioned the correctness of the payments. At that time it was discovered that AUO had erroneously been paid since the BNDD Administrative Manual specifically provided that such payments were to cease upon an employee's transfer to Headquarters in Washington, D.C.. The resulting overpayment was in the amount of \$794.88.

Our Claims Division settlement denied waiver of the claim on the ground that as Special Agent in Charge at the San Diego District Office, Mr. Halpin had approved the overtime reports of the agents he supervised, and, therefore, he apparently was aware of the basis for entitlement to ADO as set forth in the BNDG Administrative Manual. Further, the settlement noted that when Mr. Halpin first inquired with the Personnel Management Division he had spoken to a grade GS-4 clerk-typist. The settlement held that this employee is not considered to be an appropriate official to whom an employee should question an unexplained increase in pay or allowances within the scope of the General Accounting Office Standards for Waiver contained in 4 C.F.R. Part 91.

Mr. Halpin argues on appeal that a major part of the administrative duties pertaining to the San Diego District Office were handled by the Los Angeles Regional Office. With regard to the employee in the personnel department with whom he spoke, Mr. Halpin argues that he had no notice as to her grade or duties, and he states further:

"It is to be noted the only thing that appeared in the personnel office at that time was her name on her desk. She was not sitting in a reception area; and, when I presented the situation to her, she did not advise me she was only a Grade 4 typist but alluded to the fact that she was knowledgeable and I was in the right department."

Finally, Mr. Halpin states that the Headquarters was his first duty post where he did not prepare a daily report and that he failed to notice that overtime was not being recorded on his time and attendance sheet. However, he argues that he was under the impression that ADO payments would continue until the end of the fiscal year (3 months). Mr. Halpin notes that subsequent to this overpayment he was authorized and paid ADO at Headquarters until promoted and transferred to Chicago in 1973.

The nature of Mr. Halpin's job and position (GS-14) and his length of service in the Federal Government (nearly 20 years) raises the presumption that he is knowledgeable about personnel laws but not that he knew or should have known that ADO payments cease upon an employee's transfer to BNDG Headquarters. It further appears that Mr. Halpin acted reasonably in questioning the ADO payment by advising his supervisor and by inquiring with the personnel department.

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Under the circumstances it also appears that Mr. Halpin acted reasonably in relying upon the information provided by the employee he encountered in the personnel department since there is nothing in the record which would indicate that he should have been on notice that she lacked the knowledge or authority to advise him correctly. While the matter is not free from doubt, we do not believe that fault should be imputed to Mr. Halpin in accepting the overpayment under the circumstances of the present case.

Accordingly, the overpayments totaling \$794.88 are hereby waived under the authority of 5 U.S.C. 5584.

Acting

R. F. KELLER
Comptroller General
of the United States