

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-185735

DATE:

MATTER OF:

Karen J. Roper - Request for Waiver of
Overpayments

DIGEST:

Civilian employee of Kelly Air Force Base, Texas, appeals settlement issued by our Claims Division that refused her request under 5 U.S.C. § 5584 to waive overpayments that resulted from deductions not being increased when she increased her health insurance coverage. Inasmuch as employee received biweekly leave and earnings statements throughout the 4-year period of overpayments which did not indicate that deductions were increased, she had constructive knowledge of overpayments and therefore was at fault for not making a timely inquiry into correctness of her pay. Determination denying waiver is sustained.

This action involves an appeal by Ms. Karen J. Roper, an employee of the Department of the Air Force at Kelly Air Force Base (AFB), Texas, of a Settlement Certificate dated April 21, 1975, issued by our Claims Division which denied her request for waiver under the authority of 5 U.S.C. § 5584 (Supp. III, 1973) of a claim of the United States against her in the amount of \$942.50. The claim against Ms. Roper, formerly Mrs. Kezar, arises out of erroneous overpayments representing health insurance premiums not deducted from her pay during the period September 29, 1968, through November 4, 1972.

A review of the record indicates that on September 16, 1968, Ms. Roper executed a Standard Form, SF-2809, to increase her health insurance coverage, effective as of September 29, 1968, from "employee only" to "employee and family." This increased coverage should have resulted in a \$5.58 increase in her health insurance deduction per pay period. However, the Kelly AFB Civilian Payroll Office erroneously failed to adjust Ms. Roper's master payroll records, and the increased health insurance deductions were not made for a period of approximately 4 years. The error was discovered in November 1972 when the employee executed a new Standard Form, SF-2809, changing her health insurance benefit plan.

The employee contends that the waiver of the Government's claim to overpayments should be granted because the error in question was of administrative origin and that she was in no way at fault. The employee also points to the fact that she had only a few months Government service at the time the error was made and thus had only limited knowledge of the pay system. Finally, she asserts that she filed no health insurance claims during the period and thus derived no benefit from the increased coverage.

The conditions under which waiver of Government claims arising out of erroneous payments may be made are set forth in 4 C.F.R. § 91.5 (1975), which reads in pertinent part:

"Claims of the United States arising out of an erroneous payment of pay or allowances may be waived * * * whenever:

* * * * *

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *"

In the present case the record indicates that, through administrative error, health insurance deductions from the employee's pay remained unchanged after the employee increased her

health insurance coverage. Ms. Roper had constructive knowledge of this fact through leave and earnings statements she received each pay period after the increase was to be effective. In this connection, we have generally held that a waiver of indebtedness to the Government will not be granted when the record indicates that an employee failed to verify entries on his biweekly leave and earnings statements that would have indicated erroneous overpayments. B-172117, May 12, 1971; B-176546, September 8, 1972; and B-176231, February 23, 1973. In so ruling, we stated that the aforementioned statements are furnished for the express purpose of permitting an employee to verify deductions being made from his salary and the failure to do so constitutes fault on the part of the employee. Moreover, we have applied this rule to all employees regardless of their length of Government service.

With reference to Ms. Roper's contention that she filed no health insurance claims during the period and thereby derived no benefit from the coverage, it is clear that had she claimed benefits, they would have been paid. B-173854, September 17, 1971, and B-176231, supra.

In view of Ms. Roper's failure to make a timely inquiry concerning deductions from her pay, having received biweekly leave and earnings statements during the period involved, it cannot be said that she was without fault in the matter so as to justify waiver of the overpayments. Accordingly, we find no basis for reversing the determination of our Claims Division in refusing to grant the waiver Ms. Roper requested.

R.F.KELLER

Deputy

Comptroller General
of the United States