

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

FILE:

B-186262

DATE:

JUN 22 1976

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MATTER OF:

**James H. Schroeder--Request for waiver
of overpayment of basic compensation.**

DIGEST:

Wage Grade employee receiving \$7.45 per hour, including overseas differential, while stationed on Guam transferred to Norfolk, Virginia. His pay was incorrectly established at that rate on basis of information in travel orders since his official personnel jacket had not arrived. When employee questioned rate of pay he was advised of "saved pay" provision, and relied on information given him. Amount of \$536.82 is waived since employee, who had no special knowledge of personnel law, reasonably relied on information provided him. However, \$188.68 may not be waived since it represents amounts paid him after he was advised that he had been overpaid.

This action is in response to a request by Mr. James H. Schroeder for reconsideration of the determination of our Transportation and Claims Division (now Claims Division) denying his request for waiver under 5 U. S. C. § 5584 (1970), of an erroneous payment of compensation.

Mr. Schroeder was an Instrument Mechanic (Electronic), WG-12, rate of pay, \$7.45 per hour, stationed on Guam. Effective June 8, 1974, he exercised his return rights from overseas employment, and was transferred to the Naval Air Rework Facility, Norfolk, Virginia. In establishing his rate of pay at his new duty station, the Civilian Personnel Office was required to rely on his travel orders since his official personnel jacket had not been received. He was advised by the Civilian Personnel Office that he was entitled to "saved pay" and would continue to receive \$7.45 per hour. Mr. Schroeder questioned this amount but stated that he was unfamiliar with current saved pay regulations. However, he relied on the information provided. Having heard nothing from the Civilian Personnel Office and still at the \$7.45 rate of pay, he again in early September 1974 visited the Personnel Office and his personnel jacket was inspected at that time. The \$7.45 was found to include overseas differential and his hourly rate was reduced to \$5.92 effective September 9, 1974. Mr. Schroeder disagreed with this rate and correspondence with Guam resulted in a determination that Mr. Schroeder was entitled to \$6.06 per hour at the time of his transfer and that rate was increased to \$6.39 per hour effective July 21, 1974. On or about September 26, 1974, he was advised that he had been overpaid a total of \$725.50.

The authority to waive overpayments of pay and allowances is contained in 5 U. S. C. § 5584 (1970). Subsection (b) of that section prohibits exercise of waiver authority by the Comptroller General:

"(.) 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 the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1976), provides, in pertinent part, for waiver of an erroneous payment 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. * * *"

The question arises as to whether Mr. Schroeder was at fault in accepting the overpayment. In regard to the requirement that there be no indication of fault, we stated in B-165663, June 11, 1969, that:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

B-186262

We believe that a reasonable and prudent employee should have questioned the correctness of his pay under the circumstances described above. The record shows that Mr. Schroeder did question the correctness of his pay when he reported to Norfolk, Virginia in early June 1974. He was advised that he was entitled to "saved pay" and that his pay was correct. The record does not indicate that Mr. Schroeder had any special knowledge of personnel laws or that he worked in a position in which such knowledge was required. Therefore, we believe that it was reasonable for him to rely on the advice given him by the Civilian Personnel Office concerning the accuracy of his pay. See B-180137, December 28, 1973.

Accordingly, the amount of \$536.82 is hereby waived, which represents overpayments paid Mr. Schroeder from the effective date of his transfer to Norfolk until September 9, 1974. At that time he was advised the he was entitled to be paid at the rate of \$5.92 per hour, and we believe that it was reasonable to expect him to set aside the difference between that rate and the rate he was being paid until such time as his pay entitlements could be definitely verified. The record shows that he was overpaid \$188.68 after being notified on September 9, 1974, of the possible overpayment. Waiver of that amount may not be granted.

The amount of \$536.82 is hereby waived pursuant to 5 U. S. C. § 5584 (1970), and the balance of \$188.68 should be collected from Mr. Schroeder.

R.F.KELLER

Comptroller General
of the United States