

DOCUMENT RESUME

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[Waiver of Overpayment]. B-189200. July 20, 1977. 3 pp.

Decision re: Carlos A. Costta; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 5 U.S.C. 5584. 4 C.F.R. 91. B-184480 (1976).

The protester appealed the denial of his application for a waiver of overpayments of foreign post differential received while he was in a locality for which post differential was not authorized. Due to an administrative error, the employee continued to receive post differential authorized at his old duty station. The denial of the waiver was sustained since the employee was partly at fault. He should have known of the overpayments since he was aware that upon transfer the post differential would terminate, and he should have expected a decrease in his gross pay. (Author/SC)

02915

DECISION



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

AGAZARIAN
CIV. PER

FILE: B-189200

DATE: July 20, 1977

MATTER OF: Carlos A. Costa - Waiver of Overpayment

DIGEST: Civilian employee of Army requests waiver of overpayments of \$3,039.16 for 25 percent post differential payments received while in Tehran, Iran, a locality for which post differential is not authorized. Due to administrative error employee continued to receive post differential authorized at old duty station. Erroneous payments were shown in employee's earnings statement of "gross pay." Claims Division action denying waiver is sustained as employee was partly at fault as he should have known of overpayments as he was aware that upon transfer post differential would terminate and should have expected decrease in "gross pay."

By letter dated April 13, 1977, Mr. Carlos A. Costa appealed the action of our Claims Division which denied his application for waiver of overpayments of foreign post differential in the amount of \$3,039.16.

The record shows that Mr. Costa, a civilian employee of the Department of the Army, grade GS-11, was assigned to duty at Dezful, Iran, on October 13, 1973, for which he was authorized a 25 percent foreign post differential. On November 4, 1973, Mr. Costa was transferred to a new duty station in Tehran, Iran, a locality for which post differential was not authorized. Mr. Costa in his request for waiver of indebtedness dated January 12, 1975, indicated that he was aware at the time of his transfer to Tehran, that he would no longer be entitled to payment of post differential.

Due to administrative error the form for termination of post differential was not filed with the central accounting office in Europe and Mr. Costa continued to receive post differential at Tehran from November 4, 1973, to August 24, 1974. The amount of post differential which Mr. Costa erroneously received was in the amount of \$164.60 per biweekly pay period for the period November 17, 1973, through January 12, 1974, and thereafter in the amount of \$169.20 per pay period except for the pay period ending January 26, 1974, for which the erroneous payment was \$185.76.

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Since Mr. Costta was aware that he would not be entitled to post differential while stationed in Tehran, he should have anticipated a significant decrease in his gross and net salaries from that which he received while in Dezful, which included the 25 percent post differential. The erroneous payments of post differential were not listed under "other pay" on his Earnings and Leave Statement, DA Form 2790. However, the amount of the post differential payments were included in Mr. Costta's earnings statements as "gross pay" and were reflected in the amount of his "net pay." Since there was no decrease in Mr. Costta's salary after his transfer to Tehran he should have made an inquiry into the matter with the appropriate agency officials. In addition, we note, that for the period of erroneous payments there was a substantial discrepancy on Mr. Costta's earnings statements between his "gross pay" and the sum total of the individual pay items. For example, the copy of the Earnings and Leave Statements furnished which Mr. Costta received for the pay period ending June 29, 1974, showed that Mr. Costta received a "gross pay" in the amount of \$1,113.78 whereas the three pay items reflected on the statement "base pay," "other pay" - Sunday differential, and "non-tax pay" - separation allowance, totaled only \$944.58 a difference of \$169.20. A brief examination of his earnings statements should have brought the above discrepancy to Mr. Costta's attention.

The authority to waive overpayment of pay and certain allowances is contained in 5 U.S.C. 5584 (1970) which provides in pertinent part that the Comptroller General may not waive any claim where 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.

The implementing regulations for the statutory provision cited above are set forth in 4 C.F.R. Part 91, standards for waiver. Section 91.5(c) provides in pertinent part that claims of the United States arising out of erroneous payment of pay or allowances may be waived in whole or in part 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

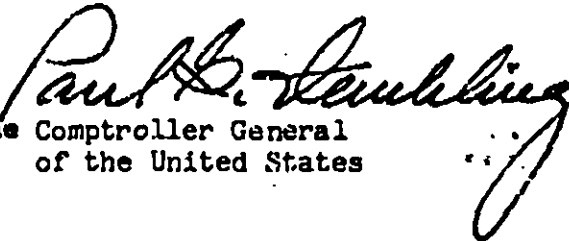
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met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or member or any other person 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.

* * *

We have stated that while the above section refers to an unexplained increase in pay, that it could also reasonably be applied to the continued receipt of salary where the employee has been given notice that his salary will be reduced at a specified date in the future and the employee's salary does not change after that date. Matter of Arthur Weiner, B-18480, May 20, 1976. Thus, we believed that a reasonable person, given the above facts, would have made an inquiry concerning the correctness of his pay.

Since Mr. Costa indicates that he was aware of the fact that after his transfer to Tehran he was not entitled to receive a post differential and that an examination of his Earnings and Leave Statements would have shown that he was continuing to receive payment it cannot be said that Mr. Costa was free from fault in the matter. Therefore, the action of the Claims Division in denying the waiver is sustained.


For the Comptroller General
of the United States