

DECISION



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

FILE: B-198263

DATE: March 30, 1981

MATTER OF: Dennis E. Cotherman - [Waiver of Erroneous
Overpayment of Salary]

DIGEST: Transferred employee erroneously received retained pay for about 18 months. Personnel action effecting transfer reflected correct rate but second one effective same date adjusted pay to erroneous rate. Several subsequent personnel actions perpetuated error. Employee alleges he was told by his former personnel office he would be entitled to retained pay upon transfer. His inquiry about termination of pay retention led to discovery of error. Agency finds no fraud or misrepresentation, but can't confirm what employee says he was told and finds him at fault for not questioning pay adjustment. We think record supports employee's contention that he in good faith believed he was entitled to pay retention and there is insufficient evidence of fault to deny waiver.

Mr. Dennis E. Cotherman requests reconsideration of the determination of our Claims Division denying his request for waiver under 5 U.S.C. § 5584 (1976), of \$3,087.88 in erroneous payments of compensation (Claim No. Z-2634493).

Mr. Cotherman was employed as a Cook WG-8, step 5, at \$4.49 per hour by the Forest Service of the U.S. Department of Agriculture at Heber, Arizona. A Reduction in Force Notice, dated May 1, 1974 (1) advised him that the installation at Heber was being

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closed and that his position would be abolished June 30, 1974, and (2) offered him a reassignment to the position of Cook WG-8, step 5, at \$4.41 per hour at Franklin, North Carolina, effective May 26, 1974. Although Mr. Cotherman did not in fact qualify for retained pay under the law then in effect, 5 U.S.C. § 5345, he alleges that he was told by his personnel office that he was entitled to pay retention and that he therefore questioned the \$.08 per hour reduction in pay. He was told that his pay would be adjusted upon his transfer and he might even receive a small increase because of differences in pay schedules for the two areas. He says that he knew a wage increase was expected shortly in the Heber area, and he adds that the 2-year pay retention was a factor in his deciding to transfer.)

In any event, Mr. Cotherman accepted the offered position and his reassignment to Franklin, effective May 26, 1974, was accomplished by a Notification of Personnel Action dated May 24, 1974. This document showed his grade, step, and pay as WG-8, step 5, \$4.61 per hour. It appears that this was the correct rate because a wage increase for Franklin had gone into effect on May 12, 1974, raising the rate for WG-8, step 5, from \$4.41 to \$4.61 per hour.

At about the same time Mr. Cotherman received the aforementioned Notification of Personnel Action, or shortly thereafter, he received two additional notifications, both dated May 26, 1974, and effective on that date. The first of these indicated that it was a pay adjustment due to the application of a Federal Wage System (FWS) area increase. It showed his grade, step, and rate as WG-8, step 5, \$5.72 per hour. The second indicated it was a pay adjustment from full time to part time. It also showed his grade, step, and rate as WG-8, step 5, \$5.72 per hour.

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Subsequently Mr. Cotherman received three more Notification of Personnel Actions all effective June 9, 1974, and all showing his grade, step, and rate as WG-8, step 5, \$5.72 per hour. The first of them was dated June 9, 1974, and was a pay adjustment to full time from part time. The second, dated June 25, 1974, was a correction of the first and adjusted him back to part time. The third, dated August 14, 1974, was another correction of the first action.

Mr. Cotherman was paid at the rate of \$5.72 per hour from May 26, 1974, the date of his transfer from Heber to Franklin, through November 22, 1975, when it was discovered that this rate was incorrect and that he had been overpaid in the amount of \$3,087.88. Apparently this error occurred because a new wage schedule went into effect for Heber on May 26, 1974, the date of Mr. Cotherman's reassignment, which increased the rate for WG-8, step 5, in that locality from \$4.49 to 5.72 and the National Finance Center erroneously adjusted Mr. Cotherman's pay to that rate even though he was no longer at Heber. The error was discovered as result of Mr. Cotherman's inquiry as to when his 2-year pay retention period ended.

The Forest Service forwarded Mr. Cotherman's request for waiver of the overpayment under 5 U.S.C. § 5584 to our Claims Division with the recommendation that it be denied. While finding no indication of fraud or misrepresentation on the part of Mr. Cotherman, the agency concluded that he was not completely free from fault for the following reasons:

- (1) He did not qualify for pay retention and his contention that he was told he did qualify cannot be substantiated.
- (2) He received 4 documents indicating 3 different pay rates effective May 26, 1974, and his failure to inquire as to which was correct constituted fault on his part.

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[Our Claims Division concurred with the Forest Service's conclusions, added that the large increase of \$1.23 per hour (\$4.49 to \$5.72) also should have put Mr. Cotherman on notice that something was wrong and denied the request for waiver.]

As has been indicated Mr. Cotherman maintains that he was told he was entitled to pay retention for 2 years. He says that, while he does not know the name of the individual who told him this, it occurred at a meeting held by personnel officials with employees at Heber incident to the reduction in force. He points out that it was his inquiry as to when the 2-year period would expire which led to the discovery of the error in November 1975. [Regarding the documents reflecting different pay rates, he states that he assumed that each succeeding one superseded the prior one.] Further, knowing before his reassignment that a pay increase was pending at Heber and believing he was entitled to pay retention, he assumed when he received the Notification of Personnel Action adjusting his pay to \$5.72 per hour as a result of a FWS area increase, that this was an increase to which he had become entitled to before leaving Heber. This rate was confirmed by the next notification he received. Accordingly, he saw no need to question it.

[Upon review of the record before us, we are of the opinion that there are sufficient grounds for concluding that Mr. Cotherman did believe that he was entitled to pay retention and that there is insufficient evidence of fault or lack of good faith on his part to deny waiver of his indebtedness.

Accordingly, the determination of our Claims Division is reversed and the claim of the United States against Mr. Cotherman arising out of the overpayment of pay in the amount of \$3,087.88 is hereby waived under the authority of 5 U.S.C. § 5584.


Acting Comptroller General
of the United States