

**DECISION**



*1143732*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-200116

**DATE:** March 23, 1981

**MATTER OF:** Robert A. Turner -  
*[Request For]* Waiver of overpayment *]*

**DIGEST:** Waiver of overpayment is denied because reemployed annuitant was partially at fault where he received statements of leave and earnings which reflected unduly large increase for pay period after general pay increase. Also, since employee knew his pay was required to be offset by amount of annuity he is similarly at fault where he received leave and earnings statements that failed to reflect reduction in pay for pay periods after he received increase in annuity.

Mr. Robert A. Turner requests reconsideration of our Claims Division's January 8, 1980 denial of his application for waiver of his debt to the United States in the amount of \$858.88. The debt arose from overpayment through administrative errors in the computation of his pay as a Department of the Army civilian employee. The denial is sustained.

Mr. Turner, a retired Government employee, was reinstated as a career employee (reemployed annuitant) with the United States Army Tank Automotive Material Readiness Command effective July 12, 1976, at the GS-13, step 7 level. Under 5 U.S.C. 8344, the pay of that position, \$27,490, was reduced by the amount of his annuity, \$14,664, and he was paid a reduced salary of \$12,826. He was correctly paid until the pay period ending October 23, 1976, at which time an administrative error was made in computing his pay to reflect the October general pay increase. For the pay period ending October 23, 1976, he did not receive the authorized increase and was underpaid by \$64. However, for the pay period ending November 6, 1976, he received a paycheck of \$284.80 in excess of his prior paycheck and he was therefore overpaid by \$120.80. After receiving a step increase from GS-13/7 to GS-13/8 effective November 7, 1976, he was overpaid \$29.60 each pay period for the pay periods ending November 20, 1976, through February 26, 1977.

Effective March 1, 1977, Mr. Turner received an increase in his monthly annuity in the amount of \$59. The payroll

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office did not receive notice of this increase in his annuity and consequently did not make the necessary reduction in his salary required by 5 U.S.C. 8344. As a result of this error and the concurrent error in establishing his basic rate of pay, he was overpaid \$54.08 for the pay period ending March 12, 1977, and overpaid \$56.80 for each pay period from the pay period ending March 26, 1977, through the pay period ending July 16, 1977. The total overpayments of \$922.88 less the underpayment of \$64 created an indebtedness of \$858.88. The errors were discovered by the Civilian Pay Office in July 1977 and were corrected for the pay period ending July 30, 1977.

Mr. Turner, in his original request for waiver, contended in essence that he was informally notified on about July 21, 1977, that his payroll computations were incorrect and that he thereafter requested necessary corrections be made, that he did not recognize the incorrect payments when received as his paycheck was normally deposited in the bank by his wife, and that it was not his responsibility to notify the payroll personnel of the correct amount of his pay in order to prevent clerical errors. Waiver was denied due to partial fault on his part in failing initially to report discrepancies in his pay when he was aware that it was reduced by his annuity, in not noticing the unusually large increase in pay which occurred in October 1976 as well as at the time of his step increase, and in not verifying his paychecks which were deposited by his wife.

In his appeal, Mr. Turner contends that action on his application for waiver was delayed, that the amount of the debt was stated incorrectly and not adequately explained when he was originally notified, and that the major portion of the overpayment was attributable to administrative errors related to complicated payroll transactions rather than to his failure to report the increase in his annuity. In addition he suggests that collection action should be suspended in consideration "for the extra hours a supervisor at his grade puts in without compensation."

The Comptroller General is authorized by 5 U.S.C. 5584 to waive claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses, if collection would be "against equity and good conscience and not in the best interests of the United States." Such authority may not be exercised if

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there is "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 statute, 4 Code of Federal Regulations (CFR) 91.5(c) (1980), states in pertinent part that:

"\* \* \* Any significant unexplained increases 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. \* \* \*"

We have held that this language applies not only to unexplained increases in pay, but also to continued receipt of the same salary when a reduction is expected. Arthur Weiner, B-184480, May 20, 1976.

If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. Roosevelt W. Royals, B-188822, June 1, 1977.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See James T. Fielding, B-194594, September 27, 1979.

In the present case, the record shows that Mr. Turner was issued a Leave and Earnings Statement for each pay period for the purpose of verifying the accuracy of his pay. When he was paid \$678.40 for the pay period ending November 6, 1976, he should have questioned the fact that that amount was nearly 40 percent greater than his pay for the prior pay period. Further, since he received a step increase effective

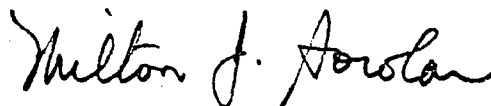
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the following pay period, the fact that his pay decreased from \$678.40 to \$618.40 for that pay period should have alerted him to the likelihood of an error in his pay. Given these unexplained fluctuations in his pay we can only conclude that he was partially at fault in failing to recognize the administrative errors and in not notifying payroll personnel when they occurred.

Since he was aware that his salary as a reemployed annuitant was required to be reduced by the amount of his annuity, we find that he was also at fault with respect to those overpayments. He neglected to notify the payroll office when his paychecks for the pay periods ending March 12, 1977, through July 16, 1977, did not reflect reductions to offset the increase in his annuity over that period. The fact that his check was deposited by his wife did not relieve him of his responsibility to determine its accuracy.

Since we find that Mr. Turner was on notice of the overpayments we cannot find that he was free from fault or that collection action is against equity and good conscience or contrary to the best interests of the United States. Mr. Turner's argument that delays in adjudicating his claim have placed him in a position of financial hardship does not provide a basis to excuse his indebtedness. An employee on notice of an error in his pay has a duty to return the excess sums or set aside this amount for refund at such time as the administrative error is corrected. While Mr. Turner was not provided a detailed accounting of the overpayment when he was first notified of the error in August of 1977, the record before us reflects that he understands the nature of the errors made and that he has had an opportunity to provide information pertinent to his request for waiver.

For the reasons stated above, the denial of Mr. Turner's request for waiver of his indebtedness is sustained. That indebtedness may not be offset by reason of the fact that he may have performed noncompensable duties in excess of his regular responsibilities.



Acting Comptroller General  
of the United States