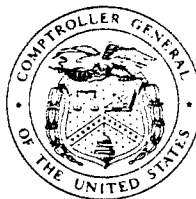


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Mr. Schwimer

DECISION



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

FILE: B-201862

DATE: April 30, 1981

MATTER OF: Robert F. Marr - Waiver

DIGEST: Employee's appeal for waiver of overpayment of salary resulting from premature within-grade increase must be denied. GS-12 employee with 20 years or more Government service should have been aware that after promotion to higher grade, he was not eligible for within-grade increase for one year. Further, when he authorized deduction from pay for prior overpayment and instead received increase, he was on notice of error. Since employee made no inquiry concerning these matters, he was not without fault and does not qualify for waiver.

Mr. Robert F. Marr requests reconsideration of the determination of our Claims Division denying his request for waiver under 5 U.S.C. § 5584 (1976), of erroneous overpayments of compensation. (Claim No. Z-2760394).

Mr. Marr was a computer specialist employed by the General Services Administration (GSA). His service computation date was June 12, 1948, indicating he had 20 years or more of Government service at the time in question. He received a promotion from grade GS-11, step 4 to GS-12, step 1 on April 1, 1973, and he was eligible for a within-grade increase to GS-12, step 2, on March 31, 1974, one year later. However, Mr. Marr erroneously received the within grade increase to step 2 on June 24, 1973, less than three months after his grade increase. This was due to the agency's failure to correct his within grade beginning date in the payroll master record when he was promoted. As a result he was overpaid \$441.60 from June 24, 1973, through March 30, 1974, when the error was discovered. Mr. Marr authorized the GSA to deduct \$20 a pay period from his salary to collect this overpayment. The

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deductions began] with the pay period beginning June 23, 1974, [but on that same date, apparently because the payroll master record still had not been corrected, Mr. Marr was again erroneously granted a within-grade increase] to grade GS-12, step 3. [Therefore, instead of receiving] \$20 less per pay period Mr. Marr actually received a slight increase in pay] from June 23, 1974, through August 31, 1974. [When this error was discovered] he had been overpaid an additional \$112.

As a result of both errors Mr. Marr was overpaid a total of \$553.60, the collection of which he requests be waived pursuant to 5 U.S.C. § 5584. [GSA] while finding no evidence of fraud or misrepresentation, [recommended that waiver be denied because Mr. Marr received leave and earnings statements and he could reasonably have been expected to notice the errors in his pay. Our Claims Division concurred and denied waiver on the ground that Mr. Marr was at least partially at fault since he did not make a prompt inquiry to the appropriate officials concerning the increases in his pay.]

[On appeal, Mr. Marr states:]

"I was overpaid because GSA personnel erroneously processed a PSI for me. [Since I was actually due a PSI sometime within the time frame that the PSI was processed, I naturally assumed the PSI was correct.] Along with other complications, I believe I was also working overtime and if this is true it would further show that it was not my intention to receive overpayment during this period. [I was totally unaware that the PSI was incorrect since I was not thoroughly familiar with the procedures used by GSA personnel to determine the effective date for the eligibility for the PSI.]"

On the record presented [we uphold our Claims Division's denial of Mr. Marr's request for waiver, based on the following analysis.]

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The authority to waive overpayments of pay and allowance is contained in 5 U.S.C. § 5584 (1976). This statute specifically provides that the Comptroller General may not exercise his waiver authority if there is an indication of fraud, misrepresentation, fault, or lack of good faith by the employee.

The issue in this case is whether Mr. Marr was at fault in accepting the overpayment. In regard to that requirement, we stated in B-165663, June 11, 1969:

"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."

[We believe that a reasonable man would have questioned the correctness of the increases in pay in the circumstances of this case. Mr. Marr, a grade GS-12 employee with 20 years or more of Government service, certainly should have been aware that the minimum waiting period for a within-grade increase is one year.] In previous cases decided by our Office we have consistently denied waiver for employees who received premature within-grade increases when circumstances indicated that such employees should have been aware of

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the waiting period. See in particular B-174301, October 22, 1971, which holds that a grade GS-12 employee with long Government service should have known that a premature within-grade increase was in error. See also John R. Hanson, B-189935, November 16, 1978; B-168823, February 17, 1970. Therefore when Mr. Marr received the erroneous increase in pay in June 1973, he should have made an immediate inquiry as to its correctness. Since he failed to do so, he was not without fault and 5 U.S.C. § 5584 precludes the granting of waiver of the resulting overpayment.

[We also deny waiver of the overpayment beginning in June 1974. Although he did not receive a large increase in pay at that time Mr. Marr should have been aware that his pay should decrease since he had authorized deductions for the previous overpayment. Also since Mr. Marr was aware that GSA had mistakenly granted him a step increase exactly a year before, he should have suspected that the same mistake was being repeated. Therefore, he is not without fault for accepting this overpayment without question.]

Accordingly, we sustain our Claims Division's denial of Mr. Marr's request for waiver of the collection of the \$553.60 he was overpaid.

Milton J. Aorstar

Acting Comptroller General
of the United States