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PL ML**DECISION****THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548**FILE:** B-204973**DATE:** March 4, 1982**MATTER OF:** Edward E. Wolfe - Waiver Overpayment
of Salary to Reemployed Annuitant

DIGEST: A reemployed annuitant at the Department of Commerce seeks a waiver, under 5 U.S.C. § 5584, of erroneous payments in the amount of \$648 based on the agency's failure to deduct the cost-of-living increase in his annuity from his salary. The waiver is denied. The employee, who was in receipt of his earnings and leave statements, was partially at fault in failing to inform his Payroll Office of its error. The employee has a duty to review documents regarding his pay. His failure to do so constitutes fault which, under the provisions of the waiver statute, precludes waiver of the claim.

This action is an appeal from the settlement by our Claims Group disallowing waiver of overpayments of salary to a reemployed annuitant, Mr. Edward E. Wolfe, by the Department of Commerce. Mr. Wolfe, who worked as a reemployed annuitant beginning in March 1978, was overpaid in the amount of \$648 because the September 1979 cost-of-living (COL) increase in his annuity was not deducted from his salary. For the reasons set forth below, the disallowance of waiver by our Claims Group is sustained.

According to the record, Mr. Wolfe was appointed to a term appointment, at the Department of Commerce, effective March 26, 1978. At that time, the amount of his annuity was properly deducted from his salary, and, during the following year, his salary was subsequently adjusted for other cost-of-living increases which were added to his annuity. However, the September 1979 increase was not deducted from his pay. The employing agency failed to take the increase into account until 7 months later on March 8, 1980, when Mr. Wolfe terminated his employment. He was notified of the error in July 1980.

In August 1980, the Department of Commerce forwarded the claim to our Claims Group, recommending that waiver be granted under the provisions of 5 U.S.C. § 5584 (1976). Waiver was disallowed in Z-2825372, on January 19, 1981, noting that the employee had a duty to insure that he was being paid the correct amount. On September 28, 1981, Mr. Wolfe requested reconsideration of the disallowance. The decisive issue here is whether the employee is partially at fault because of his failure to notify the agency of its error in computation.

The Comptroller General is authorized by 5 U.S.C. § 5584 to waive claims for erroneous payments of pay and allowances 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 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 C.F.R. § 91.5(c) (1981), states, in pertinent part, that:

" * * * 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. 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. Arthur Weiner, supra. The employee has the

responsibility to verify the correctness of his pay and where a reasonable person would have made inquiry, but the employee did not, then he is not free from fault and the claim may not be waived. 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 for determining 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, Mr. Wolfe claims that, due to direct bank deposits, he did not receive his pay stub. He also contends that, due to frequent changes in his pay and the relatively small amount he was overpaid, he would not have discovered the error by reviewing the documents he did receive. Nonetheless, these contentions do not lessen the responsibility that Mr. Wolfe had to notify the Payroll Office of his status. Mr. Wolfe admits that he did receive earnings and leave statements which he did not inspect carefully. Had he examined them, he would have known that the deduction for his COL increase in September 1979 had not been properly computed. Further, as noted by the Claims Group, Mr. Wolfe had received COL increases in the year prior to the September 1979 increase, and the increased deductions had been properly made. By virtue of the past increases, he was on notice of the proper procedure. Thus, his failure to notify the Payroll Office of the COL increase constitutes fault. See Robert A. Turner, B-200116, March 23, 1981. Under 5 U.S.C. § 5584, the Government may not waive a claim where there is an indication that the employee was at fault.

Thus, for the reasons cited above, the denial of the waiver by the Claims Group is sustained.

Shilton J. Howland
for Comptroller General
of the United States