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**DECISION**



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

**FILE:** B-207740

**DATE:** February 4, 1983

**MATTER OF:** Larry G. Lehecka - Waiver of Overpayment  
of Pay - Erroneous Step Increase

**DIGEST:**

Employee was erroneously granted step increase to step 5 prior to completion of 104 weeks of service in step 4, as required by 5 U.S.C. § 5335(a)(2) (1976). Request for waiver of erroneous payments under provisions of 5 U.S.C. § 5584 (1976) is granted where overpayment resulted from administrative error, through no fault of employee, and record does not clearly establish that employee knew or should have known of proper waiting periods between step increases.

This decision is in response to a request for reconsideration by the Navy Accounting and Finance Center of our Claims Group's settlement Z-2829597-121, dated March 5, 1982, which granted a request for waiver by Mr. Larry G. Lehecka under 5 U.S.C. § 5584 (1976). The claim against Mr. Lehecka by the United States in the amount of \$2,256, represented the aggregate overpayments of pay made to him resulting from a premature granting of a within-grade increase. Mr. Lehecka is an employee of the Department of the Navy, Pacific Missile Test Center, Point Mugu, California. The basis for the settlement action was that Mr. Lehecka reasonably could have assumed that the within-grade increase he received on January 11, 1970, was correct since his previous career history showed that he had never experienced a 2-year waiting period for a within-grade increase. Therefore, he could not have been expected to have known at the time that he was being overpaid. Consequently, the Claims Group concluded that collection of the indebtedness would be against equity and good conscience.

For the reasons stated below, we conclude that the Navy's request for reconsideration should be denied, and the granting of waiver should be sustained.

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Our examination of the record does not disclose any indication of fraud, misrepresentation, or lack of good faith on the part of Mr. Lehecka. The resolution of this case, therefore, turns on the question of whether Mr. Lehecka's lack of knowledge of the law governing the length of waiting periods for the granting of within-grade increases, is to be considered an imputable indication of fault on his part.

The facts are as follows. Mr. Lehecka was appointed to the Federal Service in September 1962, at the grade GS-9, step 1 level. He received a within-grade increase to step 2 before being promoted to GS-11, step 1, in March 1964. He received a within-grade increase to GS-11, step 2, effective February 28, 1965, and was promoted to GS-12, step 1, on January 16, 1966. He received within-grade increases to GS-12, steps 2, 3, and 4, on January 15, 1967, January 14, 1968, and January 12, 1969. On January 11, 1970, he was erroneously granted a within-grade increase to GS-12, step 5.

The error in granting the within-grade increase to step 5 effective January 11, 1970, was that the minimum waiting period for increases from step 4 to step 5 is 104 weeks rather than 52 weeks. See 5 U.S.C. § 5335(a)(2) (1976). Thus, Mr. Lehecka was not entitled to a within-grade increase to step 5 of GS-12 until January 1971. There is no evidence that Mr. Lehecka was aware of this limitation, and it appears that both he and the Personnel Staffing Specialists of the Personnel Office of the Navy activity where he was employed in 1970 assumed that he was entitled to a step increase in January 1970.

The error in awarding Mr. Lehecka a premature within-grade increase was not discovered until April 1976, when the then Civil Service Commission's Personnel Management Evaluation of the personnel program at the Pacific Missile Test Center revealed numerous errors in processing of personnel actions including a substantial number of within-grade increases, one of which was Mr. Lehecka's. The error in granting the premature within-grade to Mr. Lehecka was only one of many that were identified as a result of the Personnel Management Evaluation. On August 15, 1978,

Mr. Lehecka was issued corrected personnel actions. By memorandum from the Commanding Officer, Naval Construction Battalion Center, Port Hueneme, California, dated February 21, 1979, Mr. Lehecka was first apprised of the overpayment. The record is silent as to the reasons why the error was not discovered until more than 6 years after it occurred; why more than 2 additional years were allowed to elapse before any corrective action was taken; or why nearly 3 years were allowed to elapse from the time the error was discovered until Mr. Lehecka was so notified, thereby resulting in a lapse of more than 9 years from the inception of the error until Mr. Lehecka was made aware that it had taken place.

There is no indication from the record that Mr. Lehecka received any personnel or finance documents during intervening years from which he might have been able to deduce that the within-grade error of 1970 had been made. Nor does the record suggest that Mr. Lehecka received earnings and leave statements during any of the pay periods in question which would normally reflect grade, step, and hourly rate, and, if received, might have enabled the employee to check the accuracy of pay received.

In the Navy's request for reconsideration dated April 29, 1982, it states that its request is based on a review of Mr. Lehecka's employment record. The Navy reiterates that Mr. Lehecka was employed initially as an auditor GS-9 in 1962, became a supervisory auditor, GS-12, in 1966, and was given yearly within-grade increases through the erroneous step 5. Additionally, the Navy notes that the position description for auditor, GS-510-12, the position held by Mr. Lehecka, contains duties and responsibilities which reads, in part, as follows:

"\* \* \* [A]ssumes very broad responsibility planning and executing the audit of a Navy activity \* \* \*.

"His review emphasizes the broad aspects of financial management and involves consideration of such matters as the formulation and execution of the budget; \* \* \* maintenance of payrolls and distribution of labor costs;

accounting controls and records maintained to reflect disbursements to military and civilian personnel \* \* \*."

It is the Navy Accounting and Finance Center's position that in view of Mr. Lehecka's position, it is reasonable to expect him to be aware of the waiting period between within-grade increases.

The Pacific Missile Test Center, the activity where Mr. Lehecka is currently employed and was employed when the error was discovered, believes, however, that Mr. Lehecka's request for waiver should be granted. The Test Center believes that to impute any responsibility for the erroneous action to Mr. Lehecka would impose an unfair burden on him. The Test Center points out that:

"[i]t must be recognized that Mr. Lehecka is not expert in personnel rules, regulations, and laws. As a non-expert, he reasonably relied upon the skill of an identified subject matter expert, a Personnel Staffing Specialist, to ensure that the WGI complied with all rules. \* \* \*

\* \* \* If the subject matter expert failed to recognize the error, Mr. Lehecka can hardly be expected to meet a higher standard. \* \* \*

\* \* \* \* As the records establish, other payroll and personnel actions were taken for Mr. Lehecka without the error being identified. Again, the burden rested on the Personnel Office and he should not suffer financial loss as a result of compounded errors occurring over a period of years. He similarly should not be held accountable for overpayments which accumulated after the error was first identified and before proper corrective action was initiated."

Mr. Lehecka points out that when the error occurred in January 1970, it was the first time that he had been in a 2-year waiting period. All previous within-grade increases

had come yearly as a result of a short period of service and promotions. Mr. Lehecka reiterates that he had no knowledge that an error had occurred as he had been accustomed to getting annual step increases, that he had no control over the personnel or payroll actions that caused the error, and he made no attempt to correct the error because he did not know of it.

As stated above, from our examination of the record in this case, there is no indication of fraud, misrepresentation, or lack of good faith. The resolution thus turns on the question of whether Mr. Lehecka's lack of knowledge, whether actual or constructive, of the law in this area is to be considered an imputable indication of fault on his part. We have consistently held that:

"\* \* \* 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 under the circumstances involved a reasonable man would have made inquiry as to the correctness of the payment and the employee involved did not do so, then, in our opinion, the employee could not be said to be free from fault and the claim against him should not be waived."  
58 Comp. Gen. 721, 723 (1979).

As a general rule, our decisions have held that an employee should be aware of the waiting periods between step increases, and should make an inquiry about an increase not in accord with those waiting periods. Herbert H. Frye, B-195472, February 1, 1980; John R. Hanson, B-189935, November 16, 1978; L. Mitchell Dick, B-192283, November 15, 1978. On the other hand, where the erroneous increase was not so significant as to put an employee on notice of error, Julius C. Steel, B-182188, January 22, 1975, or where the record does not clearly establish that the employee knew, or should have known, that the rate of pay actually

received at his new position was more than the rate of pay to which he was entitled, we have granted waiver. Robert L. Zerr, B-184182, July 22, 1976.

We note that the decisions cited regarding knowledge of the Federal pay structure and waiting periods are distinguishable on their facts from the instant one. Thus, in Frye, supra, the employee had 38 years of Government service and had received an erroneous step increase before the usual maximum and commonly known waiting period after having received such increases after prior, long intervals. Likewise in Hanson, and Dick, supra, the employees, due to their positions, were chargeable with at least constructive knowledge of the Federal pay structure, and, thus, the fact that the erroneous step increases occurred before the usual minimum and commonly known waiting periods should have been known to them. See also George R. Beecherl, B-192485, November 17, 1978, where the Standard Form 50 issued to that employee in connection with a reduction-in-force specifically stated that his eligibility for retained pay began on a certain date, and the employee knew that the period was for only 2 years.

Although Mr. Lehecka was an auditor, his specialty at the Naval Area Audit Service in San Diego, California, where he was employed when the error occurred in 1970, was not personnel matters, nor was there any indication from the record that he ever had any training or experience in personnel law. There is no reason, other than his previous 8 years of Government service, to assume that he was familiar with payment regulations or practices. See William White, B-186562, March 11, 1977, and cases cited therein.

In conclusion, we do not believe that Mr. Lehecka reasonably could have been expected to have been aware of the premature nature of his step 5 within-grade increase. See Clifford C. Roan, B-198762, September 29, 1981. Accordingly, since there was an administrative error and there is no indication of fault on the part of Mr. Lehecka, the collection of the overpayments of pay in the amount of \$2,256 is hereby waived under the provisions of 5 U.S.C. § 5584 (1976).

*for*   
Comptroller General  
of the United States