

**DECISION**

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

**FILE:** B-208811

**DATE:** August 2, 1983

**MATTER OF:** Reuben O. Bowman et al. - Waiver of  
Erroneous Payments - Timeliness

**DIGEST:**

1. The Office of Audit and Internal Affairs of the Bureau of Engraving and Printing noticed in October 1978 that 14 employees of the Ink Manufacturing Branch had been overpaid environmental differential pay. Although the overpayments were stopped, inadequate administrative controls resulted in the Office of Financial Management losing track of the matter until an administrative report was filed on August 17, 1982. The record shows that the amount of the overpayment to each employee was not definitely determined prior to the filing of the report. The employees involved were never informed that they had been overpaid. Giving the benefit of the doubt to the employees, we hold that the date an appropriate official definitely discovered that overpayments had been made is the date of the administrative report. Accordingly, the Bureau's request for waiver of repayment of the erroneous payments is timely filed.
2. Fourteen employees of the Bureau of Engraving and Printing were erroneously paid hazardous duty pay at the rate of 25 percent when they should have been paid an environmental pay differential of 4 percent. The record shows that the employees had no knowledge that they were incorrectly paid, since Standard Form 50 placing them in their positions did not show the correct rate of environmental differential pay, the employees pay varied because of overtime work, and not all of their work qualified for

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environmental pay. Under these circumstances we hold that waiver of repayment is granted since the employees were not at fault for the overpayments, and collection would be against equity and good conscience and not in the best interests of the United States. 5 U.S.C. § 5584.

By letter dated August 17, 1982, Mr. Harry R. Clements, the Director of the Bureau of Engraving and Printing, Department of the Treasury, has requested that we grant waiver of repayment of overpayments made to 14 employees of the Bureau from February 15, 1976, to November 4, 1978. For the reasons set forth below, we grant waiver of repayment as requested.

#### BACKGROUND

The 14 employees involved were promoted to the Ink Manufacturing Branch after October 25, 1975. Employees who performed the weighting operation in the Ink Production Unit were entitled to an environmental pay differential of 4 percent of the hourly rate of a WG grade 10, step 2. Also, employees who were Cleaning Machine Operators in the Ink Supply and Storage Unit were entitled to the same 4 percent environmental pay differential while operating a cleaning machine. However, because the payroll system, from February 15, 1976, through November 4, 1978, did not correctly calculate environmental pay, each of the 14 employees was erroneously paid for hazardous duty pay at the maximum pay differential of 25 percent, rather than at the correct 4 percent rate for environmental pay. The employees involved did not always work in those areas that qualified for environmental pay, and each employee's pay varied each pay period because of different environmental and overtime pay.

On October 30, 1978, the Bureau's Office of Audit and Internal Affairs determined that these employees were being overpaid. The Office of Financial Management was advised that overpayments had occurred, and corrections were made in the payroll system so that the correct environmental pay was paid beginning after the pay period ending November 4, 1978.

The employees involved never questioned the reductions they received in environmental pay after the corrections were made in the payroll system.

The Director of the Bureau states that after the Office of Financial Management became aware of the overpayments, inadequate administrative controls resulted in losing track of the matter. The employees who received the erroneous payments were not informed that those payments were erroneous. While the record indicates that the overpayments were noticed in October 1978, and that the Office of Financial Management was advised of the overpayments at that time, the record does not show that the precise amount of the overpayments to each employee was determined before the administrative report was prepared and submitted to this Office with the letter of August 17, 1982.

#### TIMELINESS OF CLAIMS FOR WAIVER

Before deciding whether to grant waiver pursuant to 5 U.S.C. § 5584 (1976), we must consider the threshold issue of whether the claims for waiver were filed in a timely manner. Under 5 U.S.C. § 5584(b)(2), the Comptroller General may not exercise his authority to waive repayment if the application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered. In interpreting this statute and the waiver statute for military members, 10 U.S.C. § 2774, we have consistently held that the controlling date in determining timeliness of application for waiver is the date when the erroneous payment was discovered by the administrative office, and not when the employee was notified of the erroneous payment. 54 Comp. Gen. 133 (1974); CW4 Jacob M. Fein, B-197511, April 7, 1980; Guy F. Windley, B-195322, November 27, 1979. However, we also have held that the question as to when the discovery occurred is a factual determination, and it is the date, "it is first definitely determined by an appropriate official that an erroneous payment had been made." 54 Comp. Gen. 133,136 (1974). In cases in which it is unclear as to when the erroneous payment was discovered any reasonable doubt should be resolved in favor of the debtor. Larry M. Jeter, B-186869, February 8, 1977. Charles Gulliford et al., B-167804, January 23, 1976.

In 54 Comp. Gen. 133, cited above, a "Pay and Allowance Inquiry" form was prepared by the Army Finance Center and sent to the member's disbursing officer inquiring as to the erroneous payment, but no action was taken by the Army for over three years to notify the member or collect the debt. We held that the date of the original form was not the date when it was definitely determined by an appropriate official that an erroneous payment had been made. Instead we found the definite determination was made shortly before the member was notified.

The present case is analogous to the situation in 54 Comp. Gen. 133. Here, the Office of Audit and Internal Affairs first noticed the mistake and informed the Office of Financial Management in November 1978. Here, as in 54 Comp. Gen. 133, no action was taken by the Bureau for over three years to notify the employees or collect the debt. Additionally, it is not shown in the record that the amount of each overpayment had been determined in 1978. Therefore, in giving the benefit of the doubt to the debtors, we cannot conclude that on October 30, 1978, it had been definitely determined by an appropriate official that an erroneous payment had been made. Instead, we conclude that the date the administrative report was filed, August 17, 1982, was the date that the erroneous payments were definitely determined by an appropriate official to have been made. Accordingly, the waiver requests are not time barred.

#### WAIVER OF THE ERRONEOUS PAYMENTS

The Director of the Bureau also inquired as to whether the Bureau can request waiver for all the employees at once instead of requiring each employee to submit an individual waiver request. We have allowed the head of an agency to submit a waiver request when the erroneous overpayments arose out of the same circumstances. Panama Canal Commission, B-205126, June 17, 1982. Therefore, in the present case we accept the waiver request made by the Director of the Bureau as a proper request on behalf of all 14 employees.

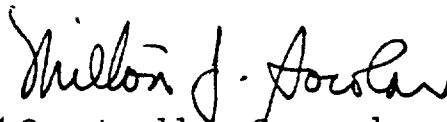
The employees involved and the specific amount of the overpayments to each employee are set forth below.

<u>EMPLOYEE</u>	<u>AMOUNT OF OVERPAYMENT</u>
Bowman, Reuben	\$ 939.56
Proctor, John O.	1,764.91
Berry, Dwight	1,457.17
Latson, George H.	2,022.10
Inman, Frazier	19.60
Garland, Mark	747.68
Moore, Henry	2,343.66
Taylor, James M.	837.63
Harris, James R.	1,482.14
Shade, Tommie	2,614.23
Black, Louis M.	56.24
Morgan, John	1,058.46
Bryant, Louis H.	1,158.53
Phelps, Lawrence	<u>1,175.68</u>
 Total of Erroneous Overpayments	  \$17,677.59

The provision of law authorizing the waiver of a claim of the United States arising out of an erroneous payment of pay or allowances, 5 U.S.C. § 5584 (1976), permits waiver when the collection of the erroneous payment would be against equity and good conscience and not in the best interests of the United States, and only when there is no 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 the waiver. In this case the administrative report states that there was no indication of fraud or misrepresentation on the part of the employees or other interested parties. The report also states that it is reasonable to assume that none of the employees involved had knowledge that they were incorrectly paid since the Ink Manufacturing Branch was the only unit in the Bureau receiving environmental pay, and the rate for environmental pay was not shown on the employees copy of Standard Form 50. Also, each employee received different pay almost every pay period due to varying amounts of overtime and varying amounts of work that qualified for environmental differential pay.

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Based on those findings, we conclude that the employees who received the erroneous payments did so in good faith and with no knowledge that the payments were erroneous. Therefore, collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States, and collection of the erroneous payments made to the 14 employees is hereby waived.

*for*   
Comptroller General  
of the United States

*Memorandum*

August 2, 1983

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TO : Associate Director, AFMD - Claims Group (Room 5858)

FROM : *for Milton J. Fowler*  
Comptroller GeneralSUBJECT: Request for Waiver - Reuben O. Bowman et al. -  
B-208811-O.M.

Attached are the following claims files:

Reuben O. Bowman	Z-2845350
John O. Proctor	Z-2845351
Dwight Berry	Z-2845352
George H. Latson	Z-2845353
Frazier Inman	Z-2845354
Mark Garland	Z-2845355
Henry Moore	Z-2845356
James M. Taylor	Z-2845357
James R. Harris	Z-2845358
Tommie Shade	Z-2845359
Louis M. Black	Z-2845360
John Morgan	Z-2845361
Louis H. Bryant	Z-2845362
Lawrence Phelps	Z-2845363

Also attached is a copy of our decision of today which allows waiver of overpayments made to these employees by the Bureau of Engraving and Printing.

Attachments

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