



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Garnette F. Miller - Waiver of Erroneous  
Payments  
File: B-221672  
Date: October 16, 1986

### DIGEST

Reemployed annuitant was overpaid due to administrative error in calculating payroll deductions. Part of erroneous overpayment resulted from initial lump sum payment supposedly due employee on account of earlier over-deductions from salary. Employee brought this overpayment to attention of proper authorities and subsequently reasonably relied on their assurance of correctness. Balance of erroneous overpayments resulted from administrative failure to fully deduct annuity payments from employee's pay, and employee failed to review pay records or take corrective action. Waiver with respect to initial lump sum payment is granted pursuant to 5 U.S.C. § 5584 (1982); waiver with respect to subsequent under-deductions is denied since employee is not without fault in failing to review documents indicating overpayments.

### DECISION

Mr. Garnette F. Miller, a reemployed annuitant with the Federal Aviation Administration (FAA), appeals the October 15, 1985, settlement of our Claims Group denying his request for waiver of \$5,922.83 in erroneous salary payments. For the reasons stated below, we deny the waiver in part and grant the waiver in part.

Mr. Miller was a retired Air Traffic Controller receiving an annuity from the Office of Personnel Management (OPM) when he was reemployed on a temporary basis effective March 27, 1983, at grade GS-14, step 5, with an annual salary of \$46,781. The formal personnel action indicates that Mr. Miller's salary was to be reduced by the amount of his annuity pursuant to 5 U.S.C. § 8344 (1982), estimating his monthly annuity payment at \$1,787. OPM provided the Department of Transportation (DOT) Personnel Office with a

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notice of the annuity payments indicating initially that Mr. Miller was receiving a monthly annuity payment of \$1,786, and deductions in this amount were made from March 27 to July 9, 1983.

On May 26, 1983, OPM provided the DOT Personnel Office with notice of a single special annuity payment for Mr. Miller in the amount of \$1,296. The DOT Personnel Office now realizes that this special payment represented OPM's prediction of 80 percent of Mr. Miller's monthly annuity payment. Since there is a necessary period for processing an annuity OPM makes this special payment estimated at 80 percent to avoid overpayment before the final monthly annuity payment is calculated. Here, however, the DOT Personnel Office erroneously processed this special payment as Mr. Miller's regular monthly annuity payment. As a result, Mr. Miller was given a check for \$2,196.36, which included the agency's calculation of earlier over-deductions of \$1,132 based on the revised monthly annuity withholding figure of \$1,296. Thereafter, from July 9, 1983 to April 28, 1984, deductions in the amount of \$1,296--\$490 less than the required deduction for the actual \$1,786 annuity--were made from Mr. Miller's monthly salary. This pattern of erroneous under-deduction resulted in a total of \$5,922.83 in overpayments to Mr. Miller.

Mr. Miller states that when he received the lump-sum check for \$2,196.36 in July 1983, he contacted his program assistant who in turn contacted the payroll department. He was informed at that time that the check included back pay which was due him because of 'over-deductions' from his pay. Mr. Miller states that he was contacted by a personnel specialist in March 1984 and asked whether he had received an increase in the amount of his monthly annuity payments. He stated that he had not, and by memorandum dated March 30, 1984, he was assured by the personnel specialist that he was being properly paid. It was shortly thereafter that the error was discovered.

The Comptroller General is authorized under 5 U.S.C. § 5584 (1982) to waive claims arising out of erroneous payments of pay if collection would be "against equity and good conscience and not in the best interests of the United States". This 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." The regulation which implements this section, 4 C.F.R. Part 91.5(c), states that these criteria are met where there is a finding that "the erroneous payment of pay or allowances occurred through administrative error \* \* \*." The regulation goes on to state that "[a]ny significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, would ordinarily preclude a waiver when the employee \* \* \* fails to bring the matter to the attention of appropriate officials."

Since it is clear that the erroneous payments in this case were the result of an administrative error, the issue is whether there was any "indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee." We have held that the language of the regulation applies not only to unexplained increases in pay, but also to receipt of an initial salary at the rate higher than expected and to continued receipt of the same salary when a reduction is expected. B-184480, May 20, 1976. Thus we have held that 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. See 62 Comp. Gen. 608 (1983). Here, Mr. Miller had records which would have revealed the overpayment had they been carefully reviewed. On the Standard Form 50's providing for his appointment it was indicated not only that Mr. Miller's annuity would be deducted from his salary but also the estimated amount of the deductions. Moreover, Mr. Miller was well aware of the monthly amount of his annuity payments and, had he added this amount to the salary which he was receiving, it would have been clear that he was being compensated in excess of the amount to which he was entitled under his appointed grade and step level. See e.g., B-188104, June 9, 1977.

Accordingly, with respect to the periodic overpayments which occurred from July 9, 1983 to April 26, 1984, we cannot say that Mr. Miller was entirely without fault. For an extended period of time Mr. Miller received payments which were some \$490 in excess of the compensation to which he was entitled, and we conclude that reasonable diligence in reviewing the accuracy of his pay documents would have revealed the error. See B-188104, supra. Therefore waiver of these erroneous payments totalling \$4,790.83 is denied.

We are not similarly persuaded with respect to the single erroneous payment made to Mr. Miller in July 1983 for \$1,132 ostensibly for back pay due to over-deductions. In that case Mr. Miller brought the matter to the attention of the appropriate officials, and relied upon the assurances of the payroll department that the payment was authorized. B-203186, December 29, 1981. Since Mr. Miller acted with reasonable diligence in attempting to correct this error, we cannot say that he was at all at fault in regard to this erroneous payment.

We, therefore, affirm the denial of our Claims Group insofar as it denied waiver of the overpayments for the period of July 1983 to April 1984. However, with respect to the single overpayment made in early July 1983 in the form of a check for back pay, waiver is hereby granted under the authority of 5 U.S.C. § 5584 (1982).

*for* Harry R. Van Cleave  
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