



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joyce G. Cook - Waiver - Early Promotion
File: B-222383
Date: October 10, 1986

DIGEST

General Schedule (GS) employee, a Public Contact Assistant with 11 years of Federal service, was promoted to GS-6, step 5, on May 15, 1983. After a desk audit which upgraded her position, and due to administrative error, a violation of the 1-year time restriction on promotions, she was promoted to GS-7, step 4, effective August 21, 1983. This action resulted in an overpayment of salary. There is no evidence of fraud, misrepresentation, or lack of good faith on the part of the employee. Although claimant had 11 years of Federal service, she did not possess any specialized knowledge of the Federal pay system. While she should have been generally aware of the 1-year time restriction on promotions, the upgrading of her position to GS-7 and certain ambiguous notations on her Standard Form 50's caused her to reasonably conclude that she was entitled to her promotion to GS-7 at the time she received it. Thus, she was not at fault in the overpayment of salary. Waiver of the overpayment is granted.

DECISION

This decision is in response to an appeal by Ms. Joyce G. Cook, an employee of Bureau of Land Management (BLM), United States Department of the Interior, requesting waiver of an overpayment of salary in the gross amount of \$1,074.16, under the provisions of section 5584, title 5, United States Code, 1982. By settlement Z-2877467-121, dated November 21, 1985, our Claims Group denied waiver. For the reasons stated in this decision, the settlement of the Claims Group is overruled and collection of the overpayment of salary to Ms. Cook is waived.

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FACTS

Ms. Cook was a Public Contact Assistant, grade GS-5, step 6. Effective May 15, 1983, she was promoted to grade GS-6, step 5. Due to administrative error, Ms. Cook was promoted to GS-7, step 4, effective August 21, 1983. Inasmuch as Ms. Cook had not met the time-in-grade requirement of 1 year between promotions, she was paid salary in excess of that to which she was entitled for the period August 21, 1983, through May 26, 1984. The error was discovered by the agency on February 20, 1985, and resulted in an overpayment of pay to Ms. Cook in the gross amount of \$1,074.16.

The record shows that Ms. Cook had approximately 11 years Federal service at the time of the improper promotion. Further, at the time Ms. Cook was promoted to GS-6, step 5, a notation in the remarks column of the Standard Form (SF)-50, Notification of Personnel Action, read: "Excepted from competitive procedures of the merit promotion plan because employee is progressing toward the full performance level of position." Upon her promotion to GS-7, step 4, a notation on the SF-50 read: "Excepted from competitive procedures of the merit promotion plan because employee is working at the full performance level of position."

In her letter of appeal, Ms. Cook points out that, although she had 11 years of Government service, she has not worked in the personnel or administrative areas, and that the Personnel Specialist of BLM who processed her promotion to GS-7 has over 39 years of Government service and yet overlooked the required waiting period between promotions under the General Schedule.

In commenting on the two notations on the SF-50's, previously quoted, Ms. Cook states that the upgraded position plus the exception notations on the SF-50's led her to believe that she qualified for a promotion following the upgrade of her position which required action by the personnel office. She also says that there are position series that are classified at "two-grade intervals", where, for an example, an employee can meet the time-in-grade requirement by merely holding a GS-5 position for one year and then be promoted to the GS-7 level. She states that prior to her promotion to the GS-7 grade level, she held a GS-5 position for 7 years. Therefore, she had no reason to question or doubt whether her promotion to GS-7 was correct.

The BLM states that the upgraded position plus the exception notations on the SF-50's would mislead the employee to believe that she qualified for a promotion following an upgrade, which required action by the personnel office. The BLM contends that to rule otherwise would place a responsibility on employees greater than "reasonable" and would, in fact, make them responsible for knowledge of payroll and personnel matters. Since there is no indication of fraud, misrepresentation, or lack of good faith by Ms. Cook, BLM recommends that Ms. Cook's request for waiver be approved.

OPINION

Under the provisions of 5 U.S.C. § 5584 (1982), the Comptroller General of the United States may waive, in whole or in part, a claim of the United States against a person arising out of an erroneous payment of pay to an employee of an agency when the collection thereof would be against equity and good conscience and not in the best interests of the United States. The implementing regulations are contained in 4 C.F.R. Parts 91, 92, and 93 (1983). Section 91.5(c) provides that the previously stated criteria are generally met by a finding that the erroneous payment of pay occurred through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. A grant of waiver of overpayments of pay must be based upon the facts involved in the particular case under consideration.

In the case before us, the overpayment resulted from an administrative error in granting the promotion to GS-7 to Ms. Cook prematurely. Further, there is no evidence of fraud, misrepresentation, or lack of good faith on the part of Ms. Cook. The basic question, therefore, is whether Ms. Cook was at fault; that is, whether as a reasonable person, she should have been aware of the administrative error in granting her the promotion to GS-7 only 3 months after she had been promoted to the GS-6 grade level.

In determining whether the actions by an employee are reasonable under the circumstances, we take into consideration such matters as the employee's position, knowledge, experience, and length of service. Carolyn Wertz, B-217816, August 23, 1985; John R. Hanson, B-189935, November 16, 1978. Here, although Ms. Cook had 11 years of Federal service, she, unlike the employee in Wertz, supra, who occupied the position of payroll clerk, is a Public Contact

Assistant. Thus, she would not necessarily possess any specialized knowledge of the Federal pay system. While she should have been aware generally of the 1-year time restriction on promotions, we find that the desk audit which led to the upgrading of her position to GS-7 and the notations on her SF-50's for both promotions stating that exceptions from competitive procedures applied, caused her to reasonably conclude that she was entitled to her promotion to GS-7 prior to the expiration of 1 year.

In the circumstances, we do not believe that Ms. Cook was at fault, fully or partially, in the creation and continuation of the overpayment of pay. Accordingly, waiver of the overpayment of salary, in the gross amount of \$1,074.16, is granted.

for *Harry R. Van Cleave*
Comptroller General
of the United States