



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Dr. Samuel R. Pines - Waiver - Actual Notice of  
Erroneous Payments

File: B-230905

Date: October 27, 1988

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### DIGEST

Waiver under 5 U.S.C. § 5584 (1982) is not appropriate to the extent that an employee continues to accept erroneous payments after receiving actual notice of the error.

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### DECISION

Dr. Samuel R. Pines, a Veterans Administration (VA) employee, appeals our Claims Group's partial denial of his request under 5 U.S.C. § 5584 (1982) for waiver of \$22,752.24 in erroneous salary overpayments he received during the period October 3, 1982, through March 14, 1987.<sup>1/</sup> The VA erroneously set Dr. Pines' special physician incentive pay rate at \$24,918, rather than the correct rate of \$19,818. The Claims Group granted waiver of \$11,572.26, but denied waiver of the remaining \$11,179.98 because Dr. Pines accepted this amount after November 1984, when he received actual notice of the error and was told that it would be corrected. Dr. Pines maintains that he relied on this assurance that all corrective measures were instituted.

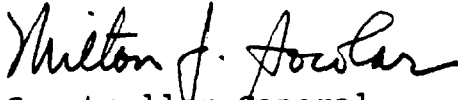
The Claims Group correctly applied our established rule that waiver is not appropriate for erroneous payments accepted by an employee after the employee has received actual notice of the error. Such an employee cannot assume that the error has been corrected and cannot reasonably expect to retain the overpayment. Kathleen M. Legault, B-214740, Oct. 2, 1984. Further, where an employee has records which, if reviewed, would indicate an erroneous payment, 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. Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988, and cases cited.

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<sup>1/</sup> Z-2881755, Oct. 27, 1987.

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In this case, the VA did not correct the overpayments to Dr. Pines until the pay period after March 14, 1987. There is no indication in the record that VA informed him at any time that the erroneous payments had ceased. On the contrary, while Dr. Pines' paychecks may have fluctuated between December 1984 and March 1987, there was no change in the physicians incentive pay rate shown on his earnings and leave statements or the Standard Form 50's he received over this period. Since a reasonable person in this case would have made inquiry as to the correctness of the pay after being notified of an overpayment, Dr. Pines' failure to do so constituted fault on his part in the continuation of the overpayment.



~~Acting~~ Comptroller General  
of the United States