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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donald R. Kremer - Waiver of Overpayment of Pay
File: B-231924
Date: October 24, 1989

DIGEST

An employee, who failed to review his leave and earnings statements and notice an unexplained step increase and the significant increase in his salary, is denied waiver of the resulting overpayment of salary.

DECISION

This decision is in response to an appeal by Mr. Donald R. Kremer, an employee of the Bureau of Land Management (BLM), Department of the Interior, requesting waiver of an overpayment of salary in the amount of \$2,509.70. Our Claims Group denied waiver stating that Mr. Kremer should have noticed from his payroll documents and leave and earnings statements that his step level had been changed and should have questioned the accuracy of his pay.^{1/} For the reasons stated later in this decision, we sustain the settlement of the Claims Group.

BACKGROUND

Mr. Kremer received several pay adjustments in 1980 including a promotion effective June 15, 1980, from Maintenance Worker, WG-6, step 5 (\$8.32 per hour), to Maintenance Worker Leader, WL-6, step 4 (\$8.83 per hour), and a general pay increase on October 1, 1980, from \$8.83 per hour to \$8.96 per hour. Subsequently, due to administrative error, he received a step increase to WL-6, step 5, at \$9.30 per hour effective December 28, 1980, and this error was not discovered until July 1984.

In his letter of appeal, Mr. Kremer states that he was not aware of the overpayment. He reports that he was involved in several reductions-in-force and was required to move to

^{1/} Z-2877618, May 12, 1987.

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work locations in different states and was placed at various grade levels and salary rates. He states that in May or June 1980, his supervisor, who was a WL-6, step 5, resigned his position. Mr. Kremer reports that he applied for and was selected to fill that position, and he states that he assumed he would be placed at the same grade level as his supervisor. Mr. Kremer contends that due to the numerous fluctuations in his grade and pay, no pay pattern developed that would have caused him to notice a change in his salary and report it to the proper authorities. He also states that some of his pay periods included overtime.

The agency contends that Mr. Kremer did not receive any notification of personnel action indicating that he was to receive a step increase, nor did he have any reason to expect a step increase at that time. The agency maintains that Mr. Kremer was partially at fault for the overpayments because he did not question the unexplained increase in his pay.

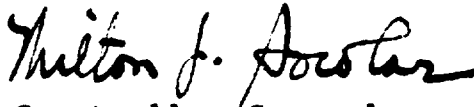
OPINION

Under the provisions of 5 U.S.C. § 5584 (1982 & Supp. IV 1986), 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 91-93 (1988), and subsection 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.

Our Office has stated that if it is determined that, under the circumstances, a reasonable person would have made inquiry as to the correctness of his or her pay, but the employee did not, then the employee is not free from fault and the overpayment may not be waived. See Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988; Roosevelt W. Royals, B-188822, June 1, 1977; B-165663, June 11, 1969. Generally, where 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. Frederick D. Crawford, 62 Comp. Gen. 608 (1983); Arthur Weiner, B-184480, May 20, 1976.

In this case, although there were fluctuations in Mr. Kremer's position classifications, grade and step levels and salary rates, he received leave and earnings statements which showed his grade and step level and rate of salary. We conclude that the premature granting of a step increase from WL-6, step 4 to step 5, approximately 6 months after he had received a promotion to WL-6, step 4, with a significant, unexplained increase in salary from \$8.96 to \$9.30 per hour, should have put Mr. Kremer, an employee with 24 years of federal service, on notice that an error had been made in computing his salary. His failure to make inquiry as to the correctness of his salary constitutes fault on his part in the continuation of the overpayment. See Herbert A. Peck, B-212478, Dec. 19, 1983.

Accordingly, waiver of the overpayment of salary is denied.



Acting Comptroller General
of the United States