



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gary W. Easton - Erroneous Overpayment of Merit Pay - Waiver
File: B-232178
Date: August 3, 1989

DIGEST

Waiver of an overpayment of a merit pay increase is granted to a grade GM-13 employee where the employee received a merit pay increase based on grade and pay retention rights which had expired. There is no indication that the employee knew or should have known of the overpayment.

DECISION

This decision is in response to an inquiry by the Department of the Interior as to whether a \$741 overpayment of a merit pay increase to Mr. Gary W. Easton, an employee of the Interior Department may be waived.^{1/} For the following reasons, we grant waiver of this overpayment.

BACKGROUND

Mr. Easton was a GM-14 employee of the Interior Department in Omaha, Nebraska, who transferred to a GM-13 position at the Jefferson National Expansion Memorial, St. Louis, Missouri. He received grade and pay retention rights for a period of 2 years, which expired on August 7, 1985. On October 13, 1985, he received a merit pay increase of \$741 which was based on the saved pay rate of GM-14 to which he was no longer entitled. The Interior Department did not correct its mistake until October 27, 1986, and did not notify Mr. Easton about its administrative error until December 8, 1986.

^{1/} The request was submitted by Mr. Jon T. Shrum, Chief, Accounting Operations Division, National Park Service, Department of the Interior.

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OPINION

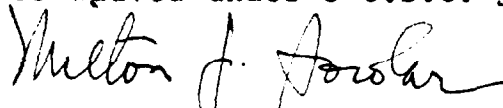
The Comptroller General is authorized by 5 U.S.C. § 5584 (1982 and Supp. IV 1986) to waive claims for overpayments of compensation and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Such authority may not be exercised if there 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. See 4 C.F.R. part 91 (1988). Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, our decision on the issue of waiver depends on whether Mr. Easton is found to be at fault.

We consider "fault" to exist if, in light of all the circumstances, it is determined that the individual concerned knew or should have known that an error existed, but failed to take action to have it corrected. Frederick D. Crawford, 62 Comp. Gen. 608 (1983); 4 C.F.R. § 91.5 (1988).

In the present case, the agency's administrative error was to grant Mr. Easton a merit pay increase based on grade and pay retention rights which had expired. This error, which caused his total compensation to exceed the then-maximum rate of \$50,520 per annum for his grade level, appears to be due to the conversion of agency payroll operation to a new processing system. Although Mr. Easton may be expected to have a general knowledge of the merit pay system, we do not believe that fault may be imputed to Mr. Easton so as to preclude waiver in this case.

The record does not indicate that he was notified that his grade and pay retention rights had expired or that his merit increase was based on the GM-14 rate. Since it appears that his merit increase would have been in line with the merit pay increases given to employees in similar positions, we do not believe that Mr. Easton should be expected to have known of the error. Finally, we note that we have granted waiver where an employee received a merit increase which caused his rate to exceed the maximum rate for grade 13. Alton L. Hawkins, B-221605, May 19, 1986.

Accordingly, we conclude that Mr. Easton's indebtedness may be waived under 5 U.S.C. § 5584.

for 
Comptroller General
of the United States