



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Edward W. Allen - Reemployed Annuitant - Waiver of Salary Overpayment

File: B-232219

Date: October 28, 1988

DIGEST

A reemployed retired federal annuitant was erroneously informed that he could be returned to federal employment at full federal salary, have his civil service annuity halted, and have his former military retired pay reinstated. Properly, however, he was entitled to his full civil service annuity but his federal salary should have been reduced by the amount of the annuity. His military retired pay could not be reinstated because he had waived it to qualify for the civil service annuity. Erroneously the agency failed to reduce his federal salary while the employee continued to receive his full annuity, but his military retired pay correctly was not reinstated. The employee recognized a problem, knew that he was being overpaid and tried to have it corrected, but spent the overpayment of \$25,900.40. Because the employee was erroneously advised he would be entitled to military retired pay, waiver of the amount of the debt equal to the expected retired pay, \$9,758.55, is appropriate. However, since he clearly knew he was being overpaid, waiver may not be granted for the remainder of the debt, \$16,141.85.

DECISION

Mr. Edward W. Allen, a civilian Supply Systems Analyst with the Department of the Navy, appeals an August 12, 1987, action by our Claims Group which waived repayment of a portion of erroneous payments received by Mr. Allen from the Department of the Navy, but denied waiver of the remainder. We affirm the action of our Claims Group.

Mr. Allen retired as an enlisted member of the U.S. Navy on September 20, 1963, and was thereby entitled to receive military retired pay. He subsequently went to work for the

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federal government in a civilian position, retiring from that position in 1976 as a result of a reduction in force. At that time, Mr. Allen waived his claim to military retired pay so that he could use his military service to qualify for a civil service retirement annuity.^{1/} On August 29, 1983, he was hired by the Department of the Navy as a civilian Supply Systems Analyst at the Naval Air Station in Alameda, California. Prior to accepting this position, Mr. Allen was erroneously advised that he could be dropped from the civil service annuity rolls and be reinstated as a federal career employee. He was also advised that he could then have his military retired pay reinstated, collecting it in addition to his full federal salary. Mr. Allen contends that he accepted the position based on this advice.

The statute governing reemployment of civil service annuitants, at 5 U.S.C. § 8344, provides that the employee shall continue to receive his civil service annuity, but his federal salary must be reduced by the amount of that annuity. The net effect is that the reemployed annuitant receives a combination of salary and annuity equal to the full salary for his position. Mr. Allen properly continued receiving his annuity checks;^{2/} however, his federal salary checks were never reduced by the annuity amount. This resulted in overpayment of salary to him of \$25,900.40 during the period of August 29, 1983, to November 24, 1984. Since Mr. Allen had been erroneously advised that his annuity would cease upon his employment and his retired pay (which was less than his annuity) would be reinstated, he recognized that he was receiving overpayments and requested strenuously and often that the mistake be corrected. At the same time the military retired pay that he was wrongly promised properly was not reinstated.^{3/} Mr. Allen indicated that in order to meet expenses, he spent the money erroneously paid to him, and he applied to have the repayment of this amount waived.

In acting on the waiver request our Claims Group followed the recommendation of the Navy to the effect that \$9,758.55, an amount equal to the military retired pay Mr. Allen had

^{1/} See 5 U.S.C. § 8332(c) and the discussion in 49 Comp. Gen. 581 (1970).

^{2/} The Office of Personnel Management was requested by the agency to discontinue the annuity payments, but that Office continued the annuity payments on the basis that Mr. Allen was a reemployed annuitant.

^{3/} 49 Comp. Gen. 581, supra.

been erroneously advised he would receive, should be waived since he was led to believe he would properly receive that pay. However, waiver of the remaining amount of the overpayment, \$16,141.85, was denied since he had no basis to believe that he was entitled to that and, in fact, knew he was being overpaid. Mr. Allen now requests waiver of that remainder.

Waiver of claims for overpayments to federal employees of pay and allowances is authorized by 5 U.S.C. § 5584. That section provides that where collection of such a claim would be against equity and good conscience and not in the best interests of the United States, it may be waived in whole or in part unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. While there is no indication of fraud or misrepresentation on the part of Mr. Allen, his decision to spend the money he knew he was not entitled to precludes waiver of this amount.

Mr. Allen clearly knew that he was not entitled to receive the full civil service annuity plus his full civilian salary, although, based on the erroneous advice he received, he did believe that he would receive military retired pay. He tried for over a year to have his payments changed to what he believed was correct, including receipt of military retired pay which would have amounted to \$9,758.55. Therefore, our Claims Group's action in waiving the amount of the debt equal to the retired pay Mr. Allen expected was appropriate. As to the rest of the overpayment, Mr. Allen knew he was being substantially overpaid. Thus, the Claims Group's action in denying waiver of the remaining \$16,141.85 also was appropriate.

Accordingly, the Claims Group's actions are sustained.



Acting Comptroller General
of the United States