



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kenneth E. Sullivan - Waiver of Salary Overpayment
File: B-232454
Date: September 1, 1989

DIGEST

1. Employee was overpaid salary due to the agency's mistake in setting step within his grade upon his promotion from one position to another. Waiver is not granted, however, because the employee was furnished with a personnel record which on its face showed the existence of the error which led directly to the incorrect step placement. Therefore, the employee is partially at fault for the overpayment.
2. Since an agency may not initiate salary offset to collect a debt more than 10 years after the government's right to collect it first accrued, an employee's debt based on salary overpayments that began in 1973 can only be collected for 10 years back from the date that the agency notified him of the debt. See 5 C.F.R. § 550.1106.

DECISION

Mr. Kenneth E. Sullivan appeals our Claims Group's denial of his request for waiver under 5 U.S.C. § 5584 of erroneous payments of compensation (Claim No. Z-2880956). For the reasons stated below, we affirm our Claims Group's determination.

In November of 1973 Mr. Sullivan was promoted from a GS-12, step 5, position with the U.S. Army Management Engineering Training Agency to a GS-13 position. However, due to an administrative error the SF-50 reflecting his promotion showed that his previous grade was a GS-12, step 9. As a result of this action, Mr. Sullivan's salary was erroneously set at the step 5 level of the GS-13 pay grade instead of the step 2 level. Therefore, Mr. Sullivan was overpaid \$22,149.60 from November 4, 1973, through September 7, 1985.

Under the authority of 5 U.S.C. § 5584, we may waive claims for overpayment of pay and allowances received by an

046397 / 139475

employee if collection action would be "against equity and good conscience and not in the best interests of the United States." However, waiver may not be granted 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."

In Mr. Sullivan's case, there is no evidence of fraud, misrepresentation or lack of good faith on the part of the employee. The issue is whether Mr. Sullivan was at fault in accepting the overpayment. "Fault" is considered to exist if it is determined that the employee knew or should have known that an error existed but failed to take corrective action.

When an employee has been assigned to the wrong step within a grade upon promotion, demotion, or the assumption of a new position, we have waived the resulting overpayments when the employee could not reasonably have been expected to know or suspect he was being overpaid and was therefore without fault. See, e.g., Anne Pesinkowski, B-211166, Aug. 25, 1983; James S. Vinson, Jr., B-211345, July 21, 1983. On the other hand, waiver has not been granted for an employee assigned to the wrong step within a grade if there is evidence indicating that the employee actually knew of the error or was furnished with pay and personnel records which, on their face, showed an error. See Beatrice M. Lansdown, B-201815, Mar. 25, 1981; Peter D. Bourgois, B-198562, Aug. 28, 1980.

The record in this case contains no evidence to indicate that Mr. Sullivan had actual knowledge that he had been placed in the wrong step of grade GS-13. However, Mr. Sullivan did receive a copy of the SF-50 regarding the transfer, which erroneously stated that he had previously been employed at the GS-12, step 9, rate. This error, which led directly to Mr. Sullivan's placement in the wrong step of GS-13, was evident on the face of the SF-50. Mr. Sullivan reasonably should have been expected to make inquiries about the error. Therefore, we must conclude that Mr. Sullivan was partially at fault with respect to the salary overpayments, and therefore waiver should not be granted.

However, under 5 C.F.R. § 550.1106, part of the implementing regulations for 5 U.S.C. § 5514 regarding salary offset, agencies may not initiate offset to collect a debt more than 10 years after the government's right to collect the debt first accrued. Therefore, the debt can only be collected for 10 years back from the date that the agency notified Mr. Sullivan of the debt.

Accordingly, we affirm the denial of Mr. Sullivan's request for waiver by our Claims Division. We are returning the case to the agency for a recomputation of the employee's debt in light of the 10-year statute of limitations on offset.

A handwritten signature in cursive script, appearing to read "Shelton J. Fowler".

Acting Comptroller General
of the United States