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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Malcolm C. McCormack - Waiver - FICA Premiums
File: B-233047
Date: February 22, 1989

DIGEST

An employee who was covered by social security received overpayments of pay because the agency deducted only the medicare portion and not the full Federal Insurance Contributions Act (FICA) premiums from his salary. The overpayments may not be waived under the provisions of 5 U.S.C. § 5584 (1982 & Supp. IV 1986) where the record shows that the employee was not without fault in this matter since he failed to effectively examine earnings statements and tax statements that would have alerted him to the error.

DECISION

This decision is in response to a request for waiver under the provisions of 5 U.S.C. § 5584 (1982 & Supp. IV 1986), for Mr. Malcolm C. McCormack, Executive Secretary, Harry S. Truman Scholarship Foundation.^{1/} The waiver request concerns FICA salary underdeductions. Waiver is denied since we find that Mr. McCormack was not without fault in this matter.

BACKGROUND

The Social Security Amendments of 1983, 42 U.S.C. § 410 (Supp. III 1985), provided that non-career members of the Senior Executive Service such as Mr. McCormack were mandatorily covered by social security, and that full FICA deductions should be made from the salaries of those employees after January 1, 1984. In addition, section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, 5 U.S.C. § 8331 note (Supp. IV 1986), required that employees who were currently participating in the Civil Service Retirement System (CSRS) and who were affected by double coverage could elect to

^{1/} The request was submitted by the Honorable Elmer B. Staats, Chairman, Harry S. Truman Scholarship Foundation.

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remain in CSRS and pay for full retirement coverage as well as paying social security tax. See Federal Personnel Manual Letter 831-79 (Dec. 15, 1983). Mr. McCormack so elected, which meant that he became subject to the full CSRS retirement deductions as well as full FICA deductions.

From January 1 to September 30, 1984, the Harry S. Truman Scholarship Foundation received payroll processing from the Advisory Committee on Intergovernment Relations (ACIR), and FICA was correctly withheld from Mr. McCormack's pay. On October 1, 1984, the Foundation contracted with the General Services Administration (GSA) to process its payroll. In the transfer of Mr. McCormack's personnel records to GSA, an incorrect retirement coverage code was entered into his records which indicated that only CSRS should be deducted from his salary. Thus, no FICA deductions were made from Mr. McCormack's pay from December 22, 1984, to July 4, 1987, when the error was discovered. This resulted in a total overpayment of pay to Mr. McCormack of \$6,736.19.

Mr. McCormack says that the first payroll slip he received from GSA in 1984 showed no FICA withholding. He states that he immediately made inquiries of ACIR and GSA and was told that the maximum amount had been withheld for the year and that proper deductions would be made beginning in 1985. In January 1985, the GSA payroll office began deducting only the medicare portion of FICA (1.35 percent) from Mr. McCormack's salary instead of the full FICA contribution (7.05 percent). Mr. McCormack says that he is now aware that the deductions shown on the pay slips and the W-2 Forms he received for 1985 and 1986 represented only the medicare portion of FICA; however, the documents contained no breakdown of the FICA components. Thus, he says he could not have detected GSA's mistake without knowing the formula for computing the total FICA deduction, computing the deduction himself, comparing his result with the amount shown by GSA, and then asking GSA to explain the discrepancy. Mr. McCormack says he had no knowledge of the error until a GSA official called the Foundation and informed them of the error. Both GSA and the Foundation recommend that the amount be waived.

OPINION

Waiver of claims for overpayments to federal employees of pay and allowances is authorized by 5 U.S.C. § 5584 (1982 & Supp. IV 1986). That statute 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, the claim may be waived unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. We have denied an application for waiver under these provisions on the basis of fault if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review those documents for accuracy or otherwise fails to take corrective actions. Michael J. Smith, B-229872, Sept. 12, 1988, 67 Comp. Gen. ____.

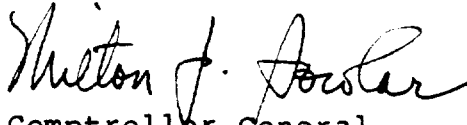
We have been furnished a representative sample of Mr. McCormack's earnings statements for calendar year 1985, and we disagree with his contention that a mistake could not have been readily detected without knowing the correct FICA formula. While the earnings statements are confusing and ambiguous in some respects, they clearly indicate the absence of any deductions for FICA. The earnings statements contain a specific heading for FICA, and the space is left completely blank without any amount entered. We also note that there is a column in the year-to-date portion of the earnings statement labeled "FICA DED-HBI" which is designed to show cumulative deductions for FICA and for health benefit insurance (HBI) premiums. The only figure that appears in that column is Mr. McCormack's health benefit insurance total accumulations. Thus, a perusal of the earnings statements would have readily shown Mr. McCormack that no FICA deductions were being made.

We also disagree with Mr. McCormack that his W-2 forms he received from GSA would not have put him on notice of an error. The Wage and Tax Statements for 1985 and 1986 show the amount withheld under a column entitled "Social Security tax withheld," followed by the total applicable social security wages, and then, under a blank column, the words "MEDICARE FED EMP." Further, Mr. McCormack's Wage and Tax Statements from ACIR and GSA for calendar year 1984 show a total of social security taxes withheld of \$2,664.90 (\$2,532.60 plus \$132.30). Mr. McCormack had only the medicare deduction of \$534.56 taken out in calendar year 1985, and a comparison of the two forms would readily have put Mr. McCormack on notice that not enough deductions were being taken.

Therefore, Mr. McCormack was partially at fault for not questioning the insufficient deductions for FICA and for not effectively examining his earning statements which would

have alerted him to the error. See Gordon Field, M.D.,
B-224910, June 22, 1987.

Accordingly, Mr. McCormack's request for waiver is denied.

for 
Comptroller General
of the United States