



The Comptroller General
of the United States

Washington, D.C. 20548

Same

Decision

Matter of: Charles R. Ryon, Sr. - Salary Overpayments -
Waiver
File: B-234731
Date: June 19, 1989

DIGEST

Waiver of an employee's debt is denied where the employee was aware that he was being overpaid after receiving duplicate salary payments from his old and new duty stations. Although the employee immediately notified the agency of the error and the overpayments continued after notification, waiver is not appropriate because when the employee is aware of an error, the employee cannot reasonably expect to retain the overpayments. The amount the employee is obligated for includes both the amounts he received directly and other amounts paid on his behalf such as for insurance, retirement and taxes.

DECISION

Mr. Charles Ryon, Sr., through counsel, appeals the action of our Claims Group denying his request for waiver of his debt resulting from his receipt of erroneous salary overpayments. For the reasons indicated below, we sustain our Claims Group action.

BACKGROUND

On August 11, 1985, Mr. Ryon, an employee of the Defense Mapping Agency (DMA), was transferred from Louisville, Kentucky, to Seoul, South Korea. On September 18, 1985, Mr. Ryon received two pay statements from his old payroll office showing salary payments for two pay periods after his transfer had been deposited directly into a bank account he maintained in the United States. Because Mr. Ryon also was being paid at his new duty station, he immediately informed his old payroll office by telephone of the erroneous salary payments and requested that the error be corrected. Nevertheless, on November 15, 1985, Mr. Ryon received a bank statement showing additional direct deposits of salary payments from his old duty station through October 31, 1985.

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Mr. Ryon promptly contacted his new finance office and requested that his old payroll office be told to terminate the direct deposit of salary payments. In December 1985, Mr. Ryon received six more pay statements showing erroneous salary overpayments from September through November 1985. Again, Mr. Ryon notified officials of the errors.

Subsequently, in January 1986, Mr. Ryon received a letter from DMA notifying him that he had been overpaid \$11,530.80 due to the failure of the personnel office at his old duty station to inform his payroll office of his transfer. The letter demanded payment of the \$11,530.80 gross salary overpayment and informed him of his right to request waiver of the overpayment. In a letter dated January 24, 1986, which also included an application for waiver, Mr. Ryon stated that he was in a position to return only \$8,797.56, the net amount of the overpayment deposited in his bank account, and that to pay the full amount would cause him financial hardship.

In a letter dated June 2, 1986, DMA told Mr. Ryon that the overpayment constitutes concurrent dual compensation by two federal agencies and is not waivable. DMA offered to settle the matter for the \$8,797.56 net overpayment, to internally adjust all tax and personal benefit accounts, and to issue Mr. Ryon a corrected W-2 Form for 1985. Mr. Ryon indicated that he wanted a formal review of his waiver request. He contended that the erroneous payment caused him to pay over \$2,000 in additional taxes for 1985.

On March 3, 1987, DMA formally denied Mr. Ryon's request for waiver of his debt. DMA requested that Mr. Ryon return the net overpayment and stated that they would provide him with a corrected W-2 Form. Mr. Ryon promptly sent a check to DMA for \$8,797.56, the amount of the net overpayment. Next, following a meeting between DMA staff and IRS staff, DMA informed Mr. Ryon that they could not send him a corrected W-2 Form. Mr. Ryon was advised that he could recoup the federal taxes paid due to the overpayment when he filed his 1987 tax return. DMA then told him he was responsible for repaying the \$1,642.28 withheld from his overpayment for federal taxes. Apparently, amounts withheld for other taxes, retirement, and other benefits have been or will be recouped by DMA.

Mr. Ryon argues that, because the erroneous payment occurred through administrative error, without fault on his part, and because he notified officials of the overpayment, collection is against equity and good conscience and not in the best interests of the United States.

OPINION

Under the provisions of 5 U.S.C. § 5584 (1982), the Comptroller General may waive, in whole or in part, a claim arising out of an erroneous payment of pay to an employee when the collection thereof would be against equity and good conscience and not in the best interests of the United States. We have consistently held that, when an employee is aware of an erroneous overpayment, he or she should be prepared to make provision for repayment. Even though an employee may inform the employing agency of the error, the employee cannot assume that the error has been corrected and, in the absence of official notice that the payments were not in error, cannot reasonably expect to retain the overpayment. In such circumstances, collection of the overpayment is not considered to be against equity, good conscience, or the best interests of the United States. See Hawley E. Thomas, B-227322, Sept. 19, 1988 and decisions cited therein. See also Richard W. DeWeil, B-223597, Dec. 24, 1986.

In this case, Mr. Ryon was clearly aware of the erroneous overpayments as soon as he received notice of them. Immediately after he received the pay and bank statements indicating erroneous payments, he notified DMA officials and requested the error be corrected. Further, there is no indication in the record that Mr. Ryon was misled concerning his obligation to eventually refund the overpayments. While we appreciate Mr. Ryon's diligence in informing DMA of the error, and recognize the administrative delay in correcting it, these are not bases for approval of waiver. Under the circumstances of this case, Mr. Ryon could not have reasonably expected to retain the overpayments. Thus, Mr. Ryon's debt may not be waived.

Mr. Ryon is indebted for the gross amount of the overpayment. Although he did not receive directly all monies which he is indebted to repay, the taxes and other amounts were withheld on his behalf and this withholding does not reduce the amount of his indebtedness. Mark F. Jones, B-202136, July 20, 1981; Saburo Nishikawa, B-190531, Apr. 3, 1978. While DMA has been able to directly recoup amounts withheld for state taxes, retirement and other benefits, DMA has demanded payment from Mr. Ryon for \$1,642.28 withheld on his behalf for federal taxes. Mr. Ryon is obligated to DMA for that amount and should

arrange to make repayment. He should contact the IRS for information concerning adjustment of his tax liability as the result of making repayment of the overpayments he received.

Milton J. Fowler

Acting Comptroller General
of the United States