



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James F. McGovern - Waiver - CSRS Underdeductions
File: B-235467
Date: October 24, 1989

DIGEST

An employee who was subject to the Civil Service Retirement Offset System received overpayments of pay because his agency failed to deduct the correct retirement amount from his salary. Waiver is granted under the provisions of 5 U.S.C. § 5584 (1982), notwithstanding the fact that the amount of the overpayments could be withdrawn from the retirement Fund, where there is no indication of fault and where the overpayments occurred over a period of time so that the employee had a reasonable basis to rely upon receipt of the money.

DECISION

This decision is in response to a request for waiver under the provisions of 5 U.S.C. § 5584 (1982) for Mr. James F. McGovern, former Under Secretary of the Air Force.^{1/} The waiver request concerns Civil Service Retirement salary underdeductions. Waiver is granted for the reasons that follow.

BACKGROUND

Mr. McGovern was appointed to an executive schedule position with the Department of the Air Force in 1986. At that time the Air Force erroneously placed Mr. McGovern in the Civil Service Retirement System instead of the Civil Service Retirement Offset System. The Air Force discovered the error in 1987; however, another administrative error was committed and Mr. McGovern was placed in the Federal Employees Retirement System (FERS) instead of the Offset System.

^{1/} The request was submitted by the Director, Settlement and Adjudication, Department of the Air Force, Headquarters Air Force Accounting and Finance Center, Denver, Colorado.

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Under FERS, when an employee reaches the maximum taxable FICA wage for the year, FICA and medicare collections cease and the employee's only contribution is a small amount to the Civil Service Retirement and Disability Fund (Fund).^{2/} A retirement offset employee, on the other hand, begins to contribute the full 7 percent to the Fund when the maximum taxable wage for FICA purposes is reached. In Mr. McGovern's case there was no resumption of the 7 percent collection when he reached his maximum taxable wage, and he was overpaid a total of \$2,069.17 for the period 1986 to 1989. The error was discovered by the Air Force in March 1989 when Mr. McGovern inquired as to the amount credited to him under the Fund. The Air Force was then required to make a payment of \$2,069.17 to the Fund to adjust for the error.

The Air Force states that ordinarily a fact pattern such as presented in this case would lead to a recommendation of waiver under the provisions of 5 U.S.C. § 5584. However, Mr. McGovern would be able to withdraw his contributions to the Fund after the effective date of his resignation in May 1989, and the Air Force is concerned that this would then become a "windfall" for Mr. McGovern.

OPINION

Waiver of claims for overpayments to federal employees is authorized by 5 U.S.C. § 5584. 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 agree with the Air Force's determination that this case meets our threshold criteria for waiver since the record does not indicate that Mr. McGovern was aware of the overpayments or that he was at fault in the matter.

Mr. McGovern was overpaid from the outset of his employment in 1986 until the error was discovered in 1989.


Mr. McGovern's leave and earnings statements only reflect a CSR deduction without a further identification as to CSRS or FERS. Thus, we believe Mr. McGovern had a reasonable basis to rely upon receipt of the money, and it would be against equity and good conscience at this late date to withhold the total amount of the overpayments from Mr. McGovern's final salary. See Sutton and McKenzie, B-206385, Dec. 6, 1982; Julius C. Steel, B-182188, Jan. 22, 1975.

^{2/} This amount was 1.30 percent in 1988.

Moreover, this situation is distinguishable from the cases in which we have denied waiver, notwithstanding the employee's lack of fault, where the agency makes an erroneous lump-sum payment directly to an employee at retirement, and the agency promptly notifies the employee of the error. In those cases repayment is required since the employee had no reasonable basis to rely on the overpayment and it was not against equity and good conscience to require repayment. See Richard C. Clough, B-230423, Mar. 13, 1989, 68 Comp. Gen. ____; Seymour Zirin, B-204974, June 24, 1982.

This result is not affected by the fact that Mr. McGovern may elect to withdraw his contributions from the retirement fund at a later date. See Dr. Calvin J. Dellefield, et al., B-179188, Nov. 21, 1978, where this Office waived erroneous payments into a private retirement fund, even though the amounts waived could be withdrawn by the employees, where there was no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employees involved.

Accordingly, Mr. McGovern's request for waiver of overpayments in the amount of \$2,069.17 is hereby granted.


Acting Comptroller General
of the United States