

Billard



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Robert L. Rancourt - Waiver of Debt - Dual Salary Payments

File: B-240556

Date: October 9, 1990

DIGEST

Subsequent to an employee's transfer, his salary was erroneously continued and he received two payments with accompanying Leave and Earnings Statements (LES) from his former agency for a time period he was employed by and received pay from his new agency. The employee indicated that someone told him he might be entitled to severance pay and he therefore assumed the payments were such pay. However, the continued receipt of regular salary payments and the LES' should have alerted him to the strong possibility that the payments were erroneous. Since he took no corrective action, he must be considered at least partially at fault, and waiver of his debt is denied.

DECISION

The issue here on appeal from the denial of his request for waiver of a debt is whether the employee knew or should have known that payments he received from his former agency subsequent to his separation were erroneous.^{1/} We conclude that he knew or should have known of the error, and therefore he is not free from fault and may not be granted waiver of the indebtedness for the erroneous payments. 5 U.S.C. § 5584 (1988); 4 C.F.R. § 91.5(c) (1989).

BACKGROUND

Mr. Robert L. Rancourt, a grade GS-11 employee, was separated from the Portsmouth Naval Shipyard and transferred to the Naval Sea Systems Command (NSSC), effective June 21, 1987. He subsequently received two payments along with Leave and Earnings Statements (LES) from Portsmouth for the two subsequent pay periods ending July 18, 1987. He also received payments for the same pay periods from NSSC. When the Navy discovered the error in August 1989, it notified Mr. Rancourt

^{1/} The employee appeals our Claims Group's settlement, Z-2904391-056, dated June 13, 1990.

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that he was indebted for \$2,430.40, for the erroneous payments.

Mr. Rancourt requested waiver under 5 U.S.C. § 5584 (1988), contending that he had no reason to know that the payments were erroneous because he was informed during separation that he may be entitled to severance pay. He says that while he doubted the correctness of that information, he decided not to question a possible unexpected benefit.

The Navy's denial of waiver was sustained by our Claims Group on the grounds that the LES', if reviewed, would have revealed that he received overpayments of salary, not severance pay, and therefore he was at least partially at fault in the matter.

Mr. Rancourt contends that the LES' contain entries similar to severance payments and would not lead the reasonable person to suspect that he received overpayments of pay.

DISCUSSION

Under 5 U.S.C. § 5584 we may waive a debt arising out of an erroneous payment; however, we are precluded from exercising that authority if there is an indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. 5 U.S.C. § 5584(b)(1).

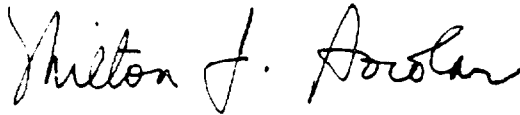
If an employee receives a payment which he is not certain is erroneous, but he has information which would put a reasonable person on notice of the strong possibility that it is erroneous, he has a duty to inquire of the agency for an authoritative explanation. Doris M. Carlino, B-204410(1), Mar. 18, 1982; and B-174301, Oct. 22, 1971. If he does not do so, he is considered to be at least partially at fault in the matter, which under 5 U.S.C. § 5584(b)(1) precludes waiver. 56 Comp. Gen. 943 (1977).

As is noted above, Mr. Rancourt contends that he had no reason to believe that the payments from Portsmouth were erroneous because someone, whom he does not identify, informed him during separation that he may be entitled to severance pay. In the absence of corroboration, generally, such allegations are not sufficient to support a finding of absence of fault. B-168738, Feb. 24, 1970.

In any event it is clear Mr. Rancourt was in doubt as to his entitlement to severance pay. Thus, when his pay continued in the same amounts he had been receiving prior to his separation from Portsmouth and he received LES' which did not state that such payments were other than pay, he should have set the money aside and requested an authoritative explanation from

Portsmouth as to the reason for the payments. However, he failed to do so. Under these circumstances, we cannot find that Mr. Rancourt is free from fault in the matter, and therefore he is not entitled to waiver of his debt.

Accordingly, we sustain the action of our Claims Group in denying waiver.

for 
Comptroller General
of the United States