



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-250892

March 31, 1993

Mr. Steven M. Helmrich, Director  
Financial Management Division  
Agricultural Research Service  
United States Department of Agriculture  
6303 Ivy Lane  
Greenbelt, Maryland 20770-1433

Dear Mr. Helmrich:

This responds to your letter of September 18, 1992 regarding Mr. [redacted] claim for severance pay, which was denied in our Claims Group's settlement, Z-2917269-056, July 23, 1992. You ask that we consider the claim for submission to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1988).

There is no dispute over the facts. The Agricultural Research Service (ARS) erroneously paid Mr. [redacted], a foreign service national employee, for annual leave and a bonus incident to his transfer from a post in Vienna, Austria, to Montpellier, France. The ARS also erroneously authorized, but has not paid, severance pay to Mr. [redacted] incident to the transfer. Our Claims Group waived collection of the erroneous leave and bonus payments made to Mr. [redacted], but found no authority to allow payment to him of the severance pay.<sup>1</sup>

You now request that we recommend Mr. [redacted] claim for severance pay to the Congress as a meritorious claim. You note that the Claims Group granted waiver of the debts of three other individuals who transferred under circumstances similar to Mr. [redacted] and who erroneously were paid severance pay prior to the agency's discovery that such payments were erroneous. You state that it is inequitable to single out and treat Mr. [redacted] adversely because of an untimely discovery of error.

<sup>1</sup>The amount of the erroneous payments of leave and bonus which were waived totaled \$13,603.28. The amount of the erroneously authorized severance pay claimed is \$19,868.60.

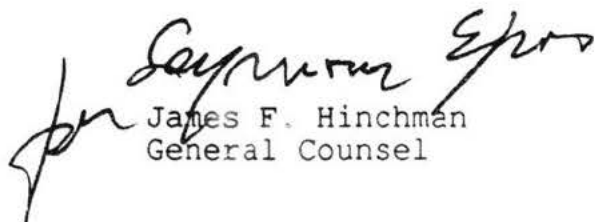
The fact that waiver of collection of the erroneous payments was granted to the other employees does not itself justify our recommending Mr. \_\_\_\_\_ claim to the Congress, pursuant to the Meritorious Claims Act, for enactment of legislation to authorize payment to him.

Our authority to waive employees' debts under 5 U.S.C. § 5584 is separate and distinct from our authority under the Meritorious Claims Act, 31 U.S.C. § 3702(d). The latter is an extraordinary remedy by which we may refer a claim to Congress with a request for enactment of special legislation to authorize payment only if the claim presents such substantial legal or equitable elements as, in our opinion, to be deserving of consideration by Congress. In cases where the claim is based on an erroneous authorization related to a transfer, we have required a showing that the erroneous authorization was the "controlling factor" in the employee's decision to relocate and that the employee incurred substantial expenses incident to the move "solely or substantially" because of the erroneous authorization.

\_\_\_\_\_, B-245203.2, June 15, 1992; \_\_\_\_\_  
\_\_\_\_\_, B-237607, May 21, 1990. - .

In this case, because the ARS had determined to eliminate Mr. \_\_\_\_\_ position in Vienna as part of a larger plan to consolidate its offices, it appears to have been in Mr. \_\_\_\_\_ interest to transfer regardless of whether he received the severance pay. Therefore, while no doubt the anticipated receipt of severance pay was a contributing factor in Mr. \_\_\_\_\_ decision to relocate to Montpellier, we cannot conclude that it was a controlling factor in that decision. Also, we do not deem it appropriate to submit a claim to Congress merely on the basis that erroneous payments were made to others in similar circumstances repayment of which has been waived. In this regard we note that the waiver granted Mr. \_\_\_\_\_ allowed him to retain over \$13,000 in erroneous leave and bonus payments. Accordingly, we do not consider Mr. \_\_\_\_\_ claim appropriate for us to submit to the Congress under 31 U.S.C. § 3702(d).

Sincerely yours,

  
James F. Hinchman  
General Counsel