

B-252973

September 23, 1993

DIGEST

Employee received a comparability pay adjustment in January 1989 but was also erroneously granted a step increase from GS-11, step 4, to GS-11, step 5, with the resulting erroneous pay increases until the error was discovered 2 years later, seeks waiver of the debt. Since he received an SF-50 clearly showing the erroneous step 5, and he also received leave and earnings statements for each 2-week pay period which showed the incorrect step, as a reasonable person, he should have been on notice of the error, and he had a duty to inquire as to the accuracy of his pay. His failure to do so makes him at least partially at fault, which statutorily precludes waiver of the overpayment of pay.



Office of the General Counsel

B-252973

September 23, 1993

Mr.
Attorney at Law
National Association of
Government Employees
36 Wine Street
Hampton, Virginia 23669

Dear Mr. MacCalmon:

This is in further response to your letter of March 22, 1993, on behalf of Mr. [redacted], an employee of the Naval Aviation Depot, Department of the Navy, Norfolk, Virginia, appealing our Claims Group's September 15, 1992, denial of his request for waiver of his debt in the net amount of \$1,809.76. Mr. [redacted] debt resulted from a payroll error in January 1989 erroneously increasing his GS-11 step from 4 to 5, which caused him to be overpaid through April 20, 1991, when the error was corrected. Our Claims Group denied his request for waiver on the basis that if he had carefully reviewed the documents the agency furnished him, he should have noticed the error.

In your letter of appeal, you contend, in essence, that since Mr. [redacted] was expecting a pay adjustment in January 1989 and the Navy's Standard Form 50 stated that the nature of the personnel action was a pay adjustment, not a step increase, Mr. [redacted] as a reasonable person, an engineer, and not a payroll clerk, had no reason to notice that the step level of his grade GS-11 had been increased erroneously from step 4 to step 5.

The pay adjustment Mr. [redacted] was expecting in January 1989 was the annual comparability increase applicable to most employees, and the agency states that information regarding that increase was widely published. As you indicate, the erroneous SF-50 Mr. [redacted] received in January 1989 stated that it was for a pay adjustment and did not specifically state that a step increase was also occurring. However, the form also clearly states on the same line with the new incorrect salary rate, that the grade and step were GS-11, step 5. Had Mr. [redacted] reviewed that line showing his new salary rate, he should have noticed the incorrect step 5,

even if he did not check the salary rate shown against the available pay schedules showing the new rates. In addition, the agency advises that each employee receives a leave and earnings statement each 2-week pay period and that such statement shows the grade and step of the employee, and that in Mr. case, these statements during the period under consideration, showed the incorrect step 5, for the rate of pay he erroneously was being paid.

In these circumstances, we conclude that Mr. was at least partially at fault, in not carefully reviewing the initial SF-50 and the subsequent leave and earnings statements he was furnished, which would have put him on notice of the erroneously listed step 5, and the likelihood that he was being overpaid. He had a duty to inquire as to the accuracy of his pay, and his failure to do so makes him at least partially at fault, which statutorily precludes waiver of the overpayment of pay. See 5 U.S.C. § 5584(b)(1). See also, B-231924, Oct. 24, 1989; B-232454, Sept. 1, 1989; and B-192283, Nov. 15, 1978; copies enclosed.

Therefore, upon review, we find no error of fact, law, or regulation which would justify a reversal of the Claims Group's settlement action. Accordingly, that action is affirmed.

Sincerely yours,

Seymour E. Hinchman

for

James F. Hinchman
General Counsel

Enclosures

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

NOT 14 1961

100-100001

REGULATIONS

Federal Procurement Regulations

Proposed revision

Solicitation of proposals and quotations

REGULATIONS

Federal Procurement Regulations

Proposed revision

Mistakes before award

Disclosure

CONTRACTS

Negotiation

Mistakes

Proposed revision of Federal Procurement Regulations

CONTRACTS

Negotiation

Requests for quotations

Proposed revision of Federal Procurement Regulations

Solicitation for proposals and quotations

CONTRACTS

Negotiation

Requests for proposals

Proposed revision of Federal Procurement Regulations

Solicitation for proposals and quotations

made without discussion. This discussion shall not be considered a discussion within the meaning of this § 1-1.802.

Sincerely yours,

Paul G. Deming
General Counsel