

KEYWORDS: waiver of indebtedness

DIGEST: An employee was promoted to a GS-14, step 2. Due to an administrative error, a Notification of Personnel Action was issued erroneously granting the employee a within-grade increase to a GS-14, step 3, effective the same date of her promotion. The employee should have questioned the step increase especially given that she had been employed by the federal government for over 20 years and had received her within-grade increases at an interval of at least a year after the prior promotion. In such a situation, waiver of the resulting overpayment is not appropriate.

CASENO: 07050112

DATE: 5/23/2007

DATE: May 23, 2007

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 07050112

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee was promoted to a GS-14, step 2. Due to an administrative error, a Notification of Personnel Action was issued erroneously granting the employee a within-grade increase to a GS-14, step 3, effective the same date of her promotion. The employee should have questioned the step increase especially given that she had been employed by the federal government for over 20 years and had received her within-grade increases at an interval of at least a year after the prior promotion. In such a situation, waiver of the resulting overpayment is

not appropriate.

DECISION

An employee requests reconsideration of the April 26, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07040205, in which DOHA denied waiver of the employee's debt for erroneous payment of salary in the amount of \$2,840.00.

Background

The employee was erroneously overpaid \$2,840.00 during the period January 8, 2006, through December 23, 2006. The error occurred when a Notification of Personnel Action (SF-50) was issued on January 12, 2006, erroneously granting the employee a within-grade increase (WGI) to a GS-14, step 3, effective December 25, 2005. The employee had just received a promotion from a GS-13, step 4, to a GS-14, step 2, on December 25, 2005.

Our Office upheld the Defense Finance and Accounting Service's (DFAS) denial of the employee's waiver request. In her request for reconsideration, the employee states that she was expecting a WGI as a GS-13 at the same time she was promoted to a GS-14. She did not question her pay increase because she assumed it was her annual WGI at the GS-14 level. She states that she reasonably relied on finance personnel to set her pay upon promotion. She cites B-211345, July 21, 1983, and B-207740, Feb. 4, 1983, in support of waiver of the debt.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver is precluded if the employee is aware or should have been aware that she was being overpaid. *See* DOHA Claims Case No. 99071601 (September 28, 1999); B-271308, Apr. 18, 1996; and 68 Comp. Gen. 573 (1989). In 68 Comp. Gen. 573, *supra*, the Comptroller General stated that employees are expected to be aware of the waiting periods between step increases and to ask payroll personnel about increases not in accord with those waiting periods.

In this case, the employee had been employed by the federal government since 1981. In her request for reconsideration, the employee admits that she is well aware of the timing between WGIs "under normal circumstances." As described in the appeal decision, on at least three

occasions during her federal career, the employee was promoted and subsequently received a WGI one year after each promotion. Given her familiarity with WGIs subsequent to promotions, after she was promoted to a GS-14, step 2, on December 25, 2005, she should not have expected a WGI until at least December 2006. Although she states that she did not receive her SF-50s until she requested copies in December 2006, she did receive leave and earnings statements (LES) during the period of overpayment which reflected that she was being paid as a GS 14, step 3. In particular, we note that her LES for pay period ending February 4, 2006, reflects that she was being paid as a GS-14, step 3. Therefore, she should have at least questioned her entitlement to a WGI from a GS-14, step 2, to a GS-14, step 3, in so short a period of time, especially since she had not received any SF-50s authorizing her entitlement.

The member cites B-211345, *supra*, and B-207740, *supra*, in support of her position that she reasonably relied on the expertise of the personnel office and assumed that she had been assigned the correct step of the grade. We find both decisions distinguishable from the present case. In B-211345, the employee was overpaid when the agency set the wrong step within the employee's grade upon his transfer from a wage grade (WG) position to a General Schedule (GS) position. The Comptroller General waived the overpayment because there was no evidence that the employee was ever informed, either in writing or orally, that he was to be placed in a particular step within the grade. In addition, the Comptroller General held that the employee was not an expert in pay and personnel matters, and was not at fault for failing to question the action of the personnel specialist using the WG pay rates as the basis for converting the employee's wage grade step and pay rate to the GS. In B-207740, the Comptroller General distinguished the facts in the case from the general rule that an employee should be aware of the waiting periods between step increases, and should make an inquiry about an increase not in accord with those waiting periods. In that case, the employee had six years of federal service at the time the overpayment occurred. He was erroneously given a WGI from a GS-12, step 4, to a GS-12, step 5, in 52 weeks. The minimum waiting period for increases from a step 4 to a step 5 was 104 weeks. The Comptroller General found no fault on the employee's part because there was no evidence that he was aware of this limitation. He received no documents that would have alerted him to the error. In addition, although he had received a WGI before, this was the first time he had experienced a two-year waiting period. All previous WGIs had come yearly as a result of a short period of service and a promotion. Waiver was therefore granted.

In the present case, as discussed above, the employee had received a WGI a year after promotion three times during her over 20 years of service with the federal government. In addition, she was furnished with documentation in the form of LES that showed the existence of the error. When she experienced a step increase immediately after receiving a promotion to a GS-14, step 2, she should have been aware that her next step increase should not have occurred for another year.

Conclusion

The employee's request for relief is denied, and we affirm the April 26, 2007, decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board