

DATE: March 20, 1997

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In Re:

[Redacted]

Claimant

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Claims Case No. 97013104

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A civilian employee of the United States Corps of Engineers was erroneously paid at the wrong step level for almost 34 months. The overpayments began at a time when a government-wide pay raise of 4.1 percent raise went into effect. Instead of a 4.1 percent increase, the employee received an increase of over 13 percent. Because she did not question the size of her increase, the employee is at least partially at fault, and waiver under 5 U.S.C. 5584 is therefore precluded.

### DECISION

This is in response to an appeal of the General Accounting Office's (GAO) Settlement Certificate Z-2927923-050, March 28, 1995, which denied the request of a civilian employee of the United States Army Corps of Engineers for waiver of a debt of \$5,357.84, which arose when she was paid at an incorrect step level for almost 34 months. Pursuant to Public Law No 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay (salary) or allowances, including travel, transportation, or relocation expenses and allowances was transferred to the Director, Office of anagement and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

### Background

The record indicates that in October 1990 the claimant had been employed by the federal government for over 5 years and was serving in a GS-6, step 4, secretary position with the Corps of Engineers in Washington, D.C., when she was promoted to a GS-7, step 4, secretary position, effective October 14. Her pay in both positions was set under the special pay rates, established pursuant to 5 U.S.C. 5303, then applicable to secretaries in the Washington area; thus, her annual pay rate in the GS-6, step 4, position was \$21,204, and upon her promotion to GS-7, step 4, it became \$22,887, an increase of \$1,683. The Standard Form 50 (SF 50), Notification of Personnel Action, issued incident to her promotion, incorrectly stated her new GS-7 level as step 7 rather than step 4, but it correctly stated her new pay rate (applicable to step 4), and she was correctly paid at the step 4 rate through January 5, 1991.

Effective the first pay period in January 1991, a general government-wide pay adjustment (comparability increase) was implemented increasing most government pay rates approximately 4.1 percent.<sup>(1)</sup> When the Corps of Engineers implemented this pay increase, the erroneous step 7 pay level shown on her SF 50 was used, and her pay was increased from \$22,887 to \$25,930, when it should have been increased to \$23,827. Thus, she received an annual pay increase of \$3,043 (amounting to an increase of over 13 percent) when she should have received an increase of only \$940 (4.1 percent). Because of this error, her pay also was miscomputed when she received annual increases in January 1992 and January 1993. As a result of these errors, she was overpaid from January 6, 1991, through October 23, 1993, when the error was corrected, and she was found to be in debt in the total amount of \$5,357.84 for the overpayments.

She seeks waiver of her debt on the basis that the errors in setting her pay were made in the agency's personnel office, in whose technical expertise she states she had total trust. She states that none of the SF 50s she received during the period

would have identified the error since she had no way of knowing the exact amount of the annual comparability increases she should have been getting. She further states that she was unable to check the accuracy of her pay level because the special pay rate scale applicable to clerical workers was not made available to her. In addition, she notes that she was the one who initially discovered the error while looking through her personnel folder in the personnel office where she had gone in late September 1993 to have her new married name entered on agency records and to check on when she would be eligible for a step increase. At that time, she states, she noticed that the copy of the SF 50 showing her January 6, 1991, pay increase had pencil changes to the step level which the copy she received did not have; and when she inquired about this, she was told that an error had been made in setting her level at step 7. It is her view that if the personnel technicians allowed errors to go undetected for nearly 3 years, she should not be held accountable for the resulting overpayments.

### **Discussion**

Under 5 U.S.C. 5584, we may waive a claim for an overpayment of pay an employee received 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, misrepresentation, fault, or lack of good faith on the part of the employee. In the present situation, the erroneous payments were made as the result of administrative errors made in the agency's personnel office in setting her pay rate, and we find no indication of fraud, misrepresentation, or lack of good faith on her part in that regard. However, an employee is considered to be at least partially at fault and waiver is precluded when the employee receives a significant unexplained increase, or otherwise knows, or reasonably should know, that an erroneous payment has occurred and fails to make inquiries or bring the matter to the attention of the appropriate officials. See Standards for Waiver, 4 C.F.R. 91.5(b)(1996).

Her waiver request was denied by the Corps of Engineers and GAO based on their findings that although she was expecting a pay increase in January 1991, she should have recognized the likelihood that an error had been made in her pay and should have brought the matter to the attention of agency officials at that time. Since she did not notify the proper officials when the error occurred, waiver is not appropriate.

We have considered the arguments presented by the claimant. It may be that a schedule of the special pay rates applicable to secretaries was not as readily available as the schedules of regular general schedule rates, and we recognize that the agency did not detect the error in her pay for nearly 3 years. However, those facts do not absolve her of the responsibility for taking a reasonable degree of care in monitoring her own pay, as shown on the documents furnished to her for this purpose and reporting questionable items to appropriate agency officials. <sup>(2)</sup> We note that the SF 50s she received clearly showed the old and new pay rates being applied to her. In particular, the SF 50 showing her comparability adjustment in January 1991 indicated that her pay was being increased by over \$3,000, nearly twice the increase she had received in October 1990 when she was promoted. As noted previously, the January increase she received exceeded 13 percent at a time when the annual comparability adjustment was only 4.1 percent. Even if she received no official pay schedule showing the special rates applicable to secretaries, the average increase established for the government's annual comparability pay increase is well publicized in the Washington area, and she should have been aware that her pay had been increased by a significantly greater amount than the 4.1 percent she reasonably could have expected. At that point, she should have brought the matter to the attention of responsible agency officials who then could have corrected the error and prevented the lengthy period of overpayments. Since she did not do so, she is considered at least partially at fault in the matter, and waiver is therefore precluded.

### **Conclusion**

Waiver is denied.

/s/ \_\_\_\_\_

Christine M. Kopocis

Acting Chairman, Claims Appeals Board

/s/ \_\_\_\_\_

Joyce N. Maguire

Member , Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

1. Pub. L. No 101-509, 618, 104 Stat 1475 (1990); and Executive Order No. 12,736, Dec. 12. 1990, 55 Fed. Reg. 51,385.

2. The importance of a careful review by each employee of the pay data provided by the employing agency has long been stressed, since such review and reporting of discrepancies for remedial action is an essential function in the government's attempt to reduce payroll errors. Employees who fail to accept this responsibility are generally considered at least partially at fault for allowing any resulting overpayments to be made. See Frederick D. Crawford, 62 Comp. Gen. 608 (1983); and B-252973, Sept. 23, 1993.