

November 4, 1997

In Re: [Redacted]

Claims Case No. 97082535

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee who erroneously was overpaid because she had been "upgraded" to GS-4, step 4 in violation of applicable regulations was told by a supervisor that he would request that her "upgrade" be granted as an exception to the regulations. She was informed three months later that no exception had been granted, but then received a Personnel Action (Standard Form 50) stating that it had been granted. Under these circumstances, the employee reasonably may not have known that she was being overpaid, and waiver of the balance of her debt is granted.

DECISION

This is in response to an appeal of Claim Settlement, DOHA Claim No. 97016158, August 19, 1997, which allowed in part, and denied in part, waiver of the claimant's debt.

Background

[Redacted] is a civilian employee of the Department of the Air Force, MacDill Air Force Base, Florida. At the time she was hired, her salary was based on the last position she held as a general schedule employee. She was initially paid as a GS-3, step 5, because she had been a GS-5, step 1, in her previous government job. By letter dated July 24, 1995, she requested that her pay documents be reviewed because she believed that she was being underpaid and that she qualified for a higher step grade, based on her previous position. The Air Force complied with her request. By letter dated August 10, 1995, which she received a week later on August 17, she was informed that her pay had been incorrectly calculated, and that she had been overpaid. Because she had had more than a two-year break in service, her pay should have been set at a

GS-3, step 1, in accordance with MacDill Air Force Base Pay Setting Policy at the time she was hired. The employee was sent the applicable regulations and an Application for Waiver of Erroneous Payments (AF Form 1782) at that time. She subsequently received a Personnel Action, Standard Form (SF) 50, dated August 18, 1997, which indicated that she had been granted a GS-4, step 4, rating due to her duties and responsibilities. Her first Leave and Earnings Statement in September reflects the information on the SF 50.

The employee submitted an Application for Waiver dated August 28, 1995, which does not list the amount of the overpayments nor the dates applicable. A memorandum from the Defense Finance and Accounting Service (DFAS), dated August 7, 1996, sets out the erroneous payments by pay period, through October 28, 1995. It states that the employee was notified of her debt on April 18, 1996, and that she submitted a request for waiver on May 13, 1996.⁽¹⁾

The investigative report provided by DFAS recommended waiver of \$2,868.00, which represents the amount received from January 23, 1995 through August 5, 1996. Since the employee was not notified of the erroneous payments until August 17, 1995. DFAS reasoned that the employee accepted the erroneous payments made before that date in good faith, believing she was entitled to them. With regard to pay received after August 17, however, DFAS noted that the employee was aware that she was being overpaid and should reasonably have set aside the overpayment for refund to the government. In our Claims Settlement Certificate, we waived \$2,868.00 and denied waiver of the \$391.20, representing erroneous payments made after the employee was notified. The employee has appealed that determination, requesting waiver of the entire amount of the overpayment. She has provided a copy of the SF 50 she received in August and other documents.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim for an overpayment of pay 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. In the present case the erroneous payments were made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part. 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). An employee or service member who knows that he or she is receiving payments in error has the duty to retain such amounts for refund. He or she is not entitled to waiver as a matter of right whenever he or she receives an overpayment as a result of an administrative error. See DOHA Claims Case No. 97012103 (June 26, 1997).

As indicated, this Office waived the portion of the debt paid to the employee prior to the date she was notified of the debt. We denied waiver of the amount paid to the employee after she was notified that she had been receiving erroneous payments. The employee now states that she did not know that she was receiving erroneous payments after August 17, 1995, because on the SF 50 she provided us she was promoted to GS-4, step 4, on August 20, 1995. She had been told by a supervisor that he was requesting this promotion for her as an exception to the regulations, and she therefore believed she was entitled to the increased salary when she received the SF 50, even though she had previously received information to the contrary. Effective August 20, 1995, her Leave and Earnings Statements indicated that she was being paid as a GS-4, step 4, in accordance with the SF 50.

Based on the SF 50 and other documentation which the employee submitted, it is our view that she received the pay of a GS-4, step 4, in good faith from August 20 until October 28. The Comptroller General has held, and we agree, that waiver is appropriate when an employee receives pay in accordance with an SF 50 which appears to be correct on its face but is later found to be erroneous. In that instance, the Comptroller General stated that it was reasonable for the employee to accept pay calculated according to the SF 50. See Herman T. Winston, B-255550, Feb. 25, 1994.

Taking this new information into consideration, we find that a reasonable person in the employee's position might reasonably not have known that she was being overpaid. Thus, we grant waiver of the remaining amount of the debt, \$391.20.

Conclusion

We reverse the Settlement Certificate as to the \$391.20. The entire debt of \$3,259.20 is therefore waived.

/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. It appears that the member's first waiver application was for the period when she was paid as a GS-3, step 5. The government's discovery of a debt in April 1996 and her second waiver application apparently included the period when

she was paid as a GS-4, step 4.