

September 28, 1999

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In Re:

[Redacted]

Claimant

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Claims Case No. 99071601

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Due to administrative error, an employee received a within-grade step increase one year before it was due. An employee is expected to know the proper timing of within-grade increases. Particularly after he experiences a two-year wait between step increases, he should question a step increase after one year. In such a situation, waiver of the resulting overpayments is not appropriate.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 99021613, dated July 9, 1999, which denied the request of a civilian employee for waiver of a debt which arose when he received a within-grade step increase sooner than allowed.<sup>(1)</sup>

### Background

In January 1987 the employee became a GS-13, step 1.<sup>(2)</sup> One year later he received a within-grade increase to step 2, and after another year (in January 1989) he received an increase to step 3. Almost immediately he received a quality increase to step 4. His increase to step 5 properly did not occur until January 1991. His next increase, to step 6, which ordinarily would not have occurred until January 1993, erroneously occurred in January 1992. The timing of that increase led to other errors in the employee's pay. For example, when he received a merit increase in December 1992, it should have been an increase to step 6 rather than step 7. That change in turn affected the level at which the employee's salary was set when he was transferred to the general management pay system two weeks later and back to the general schedule in 1994. Those errors resulted in overpayments totaling \$8,196 between January 1992 and June 1995, when the error was discovered.<sup>(3)</sup> The employee argues that the debt should be waived because he was unaware that he was being overpaid and because the net increase he received at the time of the erroneous step increase was so small that he was not alerted to the error. He states that he did not receive paperwork regarding changes in his pay in a timely manner and that he relied on payroll personnel for the accuracy of his pay.

### Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay or allowances from DoD employees 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. Waiver is precluded if the employee is aware or should have been aware that he was being overpaid. See *Barnett K. Ragsdale*, B-271308, Apr. 18, 1996; and *Daniel J. Rendon*, 68 Comp. Gen. 573 (1989). In both *Ragsdale* and *Rendon*, an employee received a step increase before the required waiting period had elapsed. In *Rendon*, 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 *Ragsdale*, the employee, who had been under the general schedule for six years, had experienced two step increases with 52-week waiting periods and then one with a 104-week waiting period. When the employee's next increase occurred after only 52 weeks, the Comptroller General said that the employee should have been aware that his next step increase should not have occurred for another 52 weeks. Waiver was therefore denied.

The case before us is similar to *Barnett K. Ragsdale*, B-271308, *supra*. While the employee maintains that he was unfamiliar with the general schedule because part of his federal service was military and part was under other pay systems<sup>(4)</sup>, we note that he had been paid under the general schedule for at least six years immediately preceding the error which led to the accrual of his debt. He had experienced a 2-year waiting period before his advance to step 5. Therefore, in the absence of a quality step increase, he should have expected a 2-year wait before he reached step 6. If he received an unexplained increase, he should have asked for an explanation. See *Daniel J. Rendon*, 68 Comp. Gen. at 573. Although the employee may not have received an SF-50 or other documentation at the time of the erroneous increase, the change in the amount of his pay, while relatively small, should have alerted him to contact payroll personnel if he could not account for the change on his own. While the amount of the error in each paycheck was small, it caused a large debt to accrue before the error was discovered and all the necessary adjustments were made. If the employee had brought the increase to the attention of payroll personnel promptly, the large debt would not have accrued. Therefore, waiver is precluded.

### Conclusion

We affirm the Settlement Certificate.

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Michael D. Hipple

Chairman, Claims Appeals Board

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

Christine M. Kopocis

Member, Claims Appeals Board

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

Jean E. Smallin

Member, Claims Appeals Board

1. Pursuant to Pub. L. No. 104-316, October 19, 1996, the Comptroller General's authority to waive overpayments of pay and allowances was transferred to the Director of the Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving members of the uniformed services and civilian employees of the Department of Defense to the Secretary of Defense. This Office now exercises the authority of the Secretary.
2. At that time the employee was a general schedule employee. In the general schedule, within-grade increases to step 2 and 3 occur at intervals of 52 weeks (in the absence of an event such as a merit increase). The next three steps occur at intervals of 104 weeks, and the later steps occur at intervals of 156 weeks.
3. The employee suggests that if an error occurred it continued only for one year, until the proper date for his next step increase. As discussed above, this is clearly incorrect. The record contains a chronology of the raises which the employee received. That record indicates that the employee was overpaid until June 1995. By regulation, this Office must accept the calculations of the employee's debt by the Defense Finance and Accounting Service (DFAS) in the absence of clear and convincing evidence to the contrary. If he disputes their calculations or requires information regarding their calculations, he should contact DFAS.
4. We note that the employee's military service occurred prior to the error which is the subject of this decision. He was employed under the general schedule pay system during the 1980's and early 1990's and moved to the general management pay system the year after the error discussed in this case.