



DIGEST - LCP

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-174301

OCT 22 1971

Mr. Richard C. Rector
c/o Veterans Administration Hospital
Room 216, Ward 2A
Gainesville, Florida 32601

Dear Mr. Rector:

This is in reference to your letter of September 24, 1971, wherein you ask for reconsideration of the action of our Claims Division which by letter of July 21, 1971, to the Department of the Air Force, denied your request for waiver of erroneous payment of pay and refund of amounts repaid.

The record indicates that you received a periodic within-grade increase from GS-12, step 4, to GS-12, step 5, on May 2, 1965. Having attained step 5 in your grade, you were then required, under the Classification Act of 1949, as amended, to wait a period of 104 weeks from that date to be eligible for an additional step. This meant you would not become eligible for another periodic within-grade increase until May 7, 1967. However, due to an administrative error, you were advanced from step 5 to step 6 of GS-12 on May 8, 1966, one year prior to eligibility and as a result of which, from that date until May 6, 1967, you were overpaid in the amount of \$379.20. The error was subsequently discovered during a 1968 audit by this Office. You now seek a waiver of the repayment and a refund of the amount you have repaid under the provisions of 5 U.S.C. 5584, as added by Public Law 90-616, approved October 21, 1968. You state that you were unaware that you were given a salary increase at an improper time and that you believed the action to be a quality step increase.

The standards for waiver of claims arising out of an erroneous payment of pay are found in 4 CFR 91-93, the implementing regulations to Public Law 90-616. Section 91.5(b) provides for waiver where:

"Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud,

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misrepresentation, fault or lack of good faith on the part of the employee * * *. Waiver of overpayments of pay under this standard necessarily must depend upon the facts existing in the particular case. * * *"

We stated in B-165663, June 11, 1969, in regard to the requirement that there be no indication of fault on the part of the employee, that:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

Thus, in determining the reasonableness of your actions at the time of the erroneous increase in salary, we must take into account your lengthy service history in positions of responsibility with the Federal Government. The Federal Records Center in St. Louis, Missouri, has furnished us with information which indicates that you were promoted to the GS-12 level in 1962 and had received periodic step increases since that time. They have sent us a copy of Standard Form 1126, Payroll Change Slip, which was issued at the time of the erroneous pay increase. A copy of that form which was furnished to you clearly shows the nature of the action to be a regular within-grade increase as distinguished from a quality step increase.

While it may be that you overlooked the notation that the increase you received was not a quality increase, it is our view that it was incumbent upon you to determine from the form the type of increase which was involved and then make inquiry as to the correctness thereof. Therefore, our previous conclusion that you were not without fault in the matter is considered to have been correct.

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The action of July 21, 1971, denying your request for waiver is sustained.

Very truly yours,

R.F. KELLER

Deputy Comptroller General
of the United States