



## Decision

**Matter of:** Hubert G. Calloway

**File:** B-257971

**Date:** March 3, 1995

### DIGEST

1. An employee, whose temporary promotion to grade GM-13, step 00, was canceled, should have reverted to his former grade and pay as a GS-12, step 6. Although the employee brought the error to the attention of his supervisor, he continued to be paid at the grade GM-13 level. Waiver of the debt is denied. Since the employee accepted payments known to be erroneous, he cannot reasonably expect to retain them and should make provision for eventual repayment. The fact that the employee may have brought the situation promptly to the attention of proper authorities does not alter that result.

2. An employee, whose temporary position as a grade GM-13, step 00, was canceled, should have reverted to his former grade and pay as a GS-12, step 6. Because of administrative error, he continued to be paid at the GM-13 level until he was transferred. On transfer, his pay should have been established at step 6 of grade 12, however, it was erroneously established at step 8 of that grade, which was a rate of pay higher than the erroneous GM-13 pay rate he had been receiving. Waiver of the debt is denied. Since he was aware of the earlier erroneous payment, he also had to know that he was not entitled to the pay of a grade GS-12, step 8, or at least should have questioned it.

### DECISION

This decision is in response to an appeal by Mr. Hubert G. Calloway from our Claims Group's settlement Z-2926509, May 11, 1994, which denied waiver of his debt to the United States in the amount of \$2,133.60. We sustain our Claims Group action, for the following reasons.

Briefly, the facts are that Mr. Calloway, an employee of the Department of the Army stationed in Germany, received a temporary promotion from grade GS-12, step 6, to grade GM-13, step 00, effective October 7, 1990, not to exceed February 6, 1991. After several extensions, the temporary position he occupied was canceled on November 16, 1991. However, because of administrative error, he continued to receive pay as a grade GM-13, step 00, until he was transferred from Germany to the Red River Army Depot (RRAD) in Texarkana, Texas, effective February 26, 1992. Since his official personnel file was not forwarded then, the RRAD Civilian Personnel Office erroneously established his grade as GS-12, step 8. When his official personnel file was received in May 1992, his grade was corrected to step 6 of grade GS-12, effective November 17, 1991, the day

after his temporary grade GM-13 was canceled. As a result, he was overpaid \$2,133.60, representing the excess salary paid as a GM-13, step 00, through February 25, 1992 (\$1,042.40), and the excess salary paid as a GS-12, step 8, instead of step 6 of that grade, from February 26, 1992, through June 27, 1992 (\$1,091.20).

Mr. Calloway argues that the personnel action reducing him from grade GM-13, step 00, to grade GS-12, step 6, was neither processed nor dated until after he had been returned to the RRAD in February 1992, thus suggesting that he did not know that he was being overpaid. We point out that in his letter to the Civilian Personnel Office of RRAD, dated August 4, 1992, seeking waiver, he acknowledged knowing that his GM-13 position was canceled in November 1991 and discussing it with his superior and that he continued receiving GM-13 pay until shortly after his transfer to RRAD. Later in correspondence dated September 21, 1993, addressed to the Commander, RRAD, in which he appealed the agency denial of waiver, he reiterated the fact that he had discussed the overpayment with his supervisor in Germany in December 1991.

Section 5584 of title 5, United States Code (1988), authorizes the Comptroller General to waive, in whole or part, claims of the United States against employees for overpayments of pay when collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good faith by the employee. In the present case, the agency determined that the overpayments were due to administrative error and that there is nothing to suggest that the error was induced by Mr. Calloway. Notwithstanding that, the record shows that Mr. Calloway has admitted knowing that he was being overpaid as early as December 1991. Further, having admitted knowing that he should not be receiving pay at the GM-13 rate, he also had to know that he was not entitled to the pay of a GS-12, step 8 (\$47,926), following his transfer to RRAD, at least he should have questioned it, since that pay rate was even higher than the erroneous GM-13 rate he had been receiving (\$47,304).

Therefore, since Mr. Calloway was aware of the overpayment when it first occurred and continued to accept the payments known to be erroneous, he cannot reasonably expect to retain them and should have made provision for eventual repayment.<sup>1</sup> This is true, even though the employee may have brought the matter promptly to the attention of the proper authorities and sought an explanation or correction of the error.<sup>2</sup> In view thereof, recovery of the overpayments would not be against equity and good conscience, nor contrary to the best interests of the United States. Accordingly, we sustain the denial of waiver in Mr. Calloway's case.

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<sup>1</sup>Martha C. Barrios, B-245449, Nov. 26, 1991, and decisions cited. See also Terry R. Allison, et al., B-256934, Sept. 20, 1994.

<sup>2</sup>Richard W. DeWeil, B-223597, Dec. 24, 1986, and decisions cited.

for /s/ Seymour Efros  
Robert P. Murphy  
General Counsel