

Charles Roney
Civ. Pers.

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DECISION



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

FILE: B-188804

DATE: July 1, 1977

MATTER OF: Cathy R. Mattingly - Waiver of
Indebtedness

DIGEST: Employee was erroneously paid lump-sum leave payment for 230 hours, instead of actual leave balance of 23 hours, resulting in overpayment of \$637.56. Employee states that she believed that check represented refund of Civil Service Retirement contributions and, thus had no reason to question payment. Agency states employee received leave and earnings statements which show leave balance and retirement fund balance. Since employee had previously received \$500.74 check refunding Civil Service Retirement contributions this Office believes that reasonable employee would have questioned receipt of two checks totaling \$1,209.14 after separation, and would have brought matter to attention of appropriate officials. Thus, employee must be considered to be at fault which precludes the granting of waiver.

This is in response to a request by Mrs. Cathy R. Mattingly for reconsideration of the determination by our Claims Division denying her request for waiver under 5 U.S.C. 5584 (1970), of an overpayment of lump-sum leave incident to her resignation as a civilian employee of the Department of Air Force.

Mrs. Mattingly states that she resigned her position on March 8, 1974, after 1 year, 4 months and 28 days of Federal service. On May 8, 1974, she received a check in the amount of \$708.40, which was a lump-sum payment for her unused annual leave at the time of her separation. Mrs. Mattingly's Record of Leave Data, SF 1150, dated March 20, 1974, showed 23 hours of annual leave or \$70.84, to be included in the lump-sum payment. However, due to a mispunch on her final time card, her final leave balance was mistakenly entered as 230 hours. Thus, the \$708.40 check received by Mrs. Mattingly resulted in an overpayment of \$637.56.

Mrs. Mattingly states that:

"During the period of my resignation from the Department of the Air Force, I requested from the Personnel Department on March 7, 1974 the forms required for a refund on my Civil Service Retirement Account. On March 8, 1974 I was

back in Louisville, Kentucky. The Personnel Department did not inform me that I should receive a lump-sum leave benefit, if I had any annual leave to my credit. There was no explanation received with the check, even though I had previously received my weekly earnings statements. Even though I was employed under Civil Service for approximately 1 1/2 years, I had never terminated from a civil service job, and had no experience with any kind of payroll error, and having no prior payroll experience, did not question the correctness of the payment."

The authority to waive erroneous overpayments of pay and allowances is contained in 5 U.S.C. 5584 (1970). Implementing regulations are contained in 4 C.F.R. Subchapter G. Section 91.5 of 4 C.F.R. provides, in pertinent part, for waiver whenever:

"(c) 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 or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. * * *"

Mrs. Mattingly contends that waiver should be granted because the overpayment resulted from an administrative error. However, as can be seen from the above-quoted regulation, there must also be a finding that there was no indication of fraud, misrepresentation, fault, or lack of good faith on the employee's part. In regard to the requirement that there be no indication of fault, in B-165663, June 11, 1969, we stated that where 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 of fault in the matter and the claim against him should not be waived.

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Mrs. Mattingly has stated that she assumed that the \$708.40 check she received on May 8, 1974, represented the refund of her Civil Service Retirement contributions and, therefore, she had no reason to question the payment. However, we have informally ascertained that, in addition to the \$708.40 check representing her lump-sum leave payment, she was also issued a check in the amount of \$500.74 dated April 15, 1974, representing a refund of her retirement contributions. We believe that her failure to bring the matter to the attention of the proper officials after receiving two checks totaling \$1,209.14 within a short period of time following her separation was not reasonable where leave and earnings statements furnished by the agency show the leave balance and amount of retirement deductions.

Accordingly, the determination of our Claims Division denying the request for waiver is sustained.

W. K. Kitter
Deputy Comptroller General
of the United States.

Charles Loney
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Director, Claims Division

Deputy Comptroller General ^{H. P.} KELLER

Request for waiver by Cathy R. Mattingly - B-188804

Attached is the file relating to B-2601858 and our decision concerning the above-captioned matter in which we sustained your denial of Mrs. Mattingly's request for waiver.

Attachments

RLW