Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barnett K. Ragsdale

File: B-271308

Date: April 18, 1996

DIGEST

An employee who was subject to a 104-week waiting period before his next scheduled within-grade pay increase (WGI), erroneously received a WGI after just 5 months, and was overpaid for over 15 months until the agency discovered the error. The denial of his request for waiver of the resulting debt is sustained. Absent mitigating circumstances, employees are expected to know the waiting periods for WGIs. In this case, at the time of the error, the employee had been employed by the agency for 6 years, during which he had experienced two 52-week and one 104-week waiting periods for WGIs, and there are no apparent factors that reasonably could have led him to believe he was entitled to the early WGI.

DECISION

Mr. Barnett K. Ragsdale, a secretary with the General Accounting Office (GAO), appeals our Claims Group's settlement, Z-2942893, Jan. 30, 1996, denying his request for waiver of his $980 debt to the agency. We affirm the settlement.

BACKGROUND

The agency promoted Mr. Ragsdale from a GS-6, step 5 position to a GS-7, step 5 position on September 19, 1993. As a result, he was not eligible for his next within-grade increase (WGI) until September 1995, after completing 2 years of service at the new pay rate. However, due to an administrative error, Mr. Ragsdale received a WGI (step 6 of GS-7) effective February 20, 1994,[1] just 5 months after his promotion. As a result, he received erroneous salary payments until May 13, 1995, when the agency detected the error during a quality control review. Mr. Ragsdale then was notified of the error and asked to refund the $980 in erroneous payments he had received.

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[1]This was the date he would have reached eligibility for a WGI at the GS-6 level had he not received the promotion to GS-7 in September 1993.

Mr. Ragsdale asked the agency to waive collection of the debt, stating that he was not aware that he was being paid erroneously. He also stated that he was unaware of how pay was computed upon a promotion and assumed that the increase he received in February was related to his promotion. In its reply to this request, the agency noted that Mr. Ragsdale had been promoted twice since becoming employed by GAO in February 1988, and had experienced two 52-week waiting periods and one 104-week waiting period for WGIs during his tenure at GAO. The agency therefore concluded that Mr. Ragsdale had sufficient experience at the time he first received the erroneous WGI to have questioned why he was receiving a pay increase just 5 months after a promotion. Since he had not done so, the agency denied his request for waiver.

Mr. Ragsdale then appealed the agency's decision to our Claims Group, asserting, in addition to his argument that his lack of experience in pay matters justified a waiver, that his case was similar to the case of another employee in which the agency had granted waiver. In its report to the Claims Group, the agency noted that the other employee referred to by Mr. Ragsdale had only 2.5 years of experience, compared to his 6 years and had experienced only one 52-week waiting period for a WGI, compared to the two 52-week and one 104-week waiting periods experienced by Mr. Ragsdale.

The Claims Group settlement sustained the agency's denial based on the general rule that, absent mitigating circumstances, employees are expected to be aware of the federal pay structure and the fundamental requirements for pay increases. With respect to the waiver granted the other employee, to which Mr. Ragsdale had referred, the Claims Group noted that each request for waiver must be decided on the basis of its own merits.

Mr. Ragsdale now requests reconsideration of the Claims Group settlement, asserting essentially the same grounds for waiver he asserted earlier: first, that he had little knowledge of federal personnel matters and; second, that the agency waived the debt of a similarly situated employee. He also states that for several years he has been confused by the leave and earnings statements he receives.

OPINION

The Comptroller General is authorized by 5 U.S.C. § 5584 to waive claims arising out of erroneous payments of pay and allowances if collection "would be against equity and good conscience and not in the best interests of the United States," and there is no "indication of fraud, misrepresentation, fault, or lack of good faith" on the part of the employee seeking waiver. See also the standards for waiver, 4 C.F.R. § 91.5 (1995).

In Mr. Ragsdale's case, the early granting of the WGI was due to administrative error, and there is no indication of fraud, fault, misrepresentation, fault, or lack of good faith on his part in that regard. However, as to fault in regard to his receipt of the erroneous payments for 15 months, until they were discovered by the agency, we consider an employee to be at least partially at "fault" for receiving erroneous payments if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. See Daniel J. Rendon, 68 Comp. Gen. 573 (1989); and 4 C.F.R. § 91.5(b). The question then in Mr. Ragsdale's case is whether he should have been aware of the strong likelihood an error had been made when he received the erroneous WGI and should have brought the matter to the attention of appropriate agency officials.

As the Claims Group noted, employees are expected to have a general understanding of the federal pay system applicable to them, including the waiting periods between WGIs, and they are expected to question pay increases granted prior to the prescribed waiting periods. Daniel J. Rendon, supra, and cases cited therein. We have, however, recognized mitigating circumstances which warrant an exception. For example, in Joyce G. Cook, B-222383, Oct. 10, 1986 (which is cited by Mr. Ragsdale), we granted waiver to an employee who erroneously received two promotions within 1 year (contrary to a rule requiring a least 1 year between promotions) where the first promotion occurred because her position was upgraded and there were ambiguous notations on her personnel documents which caused her to reasonably conclude that she was not subject to the 1-year rule. In another case, Richard G. Anderegg, 68 Comp. Gen. 629 (1989), the employee was erroneously granted a WGI. However, there we took note of the facts that the employee was a foreign national who had been hired overseas and had less than 2 years of experience as a federal employee. We concluded that the employee's limited exposure to the federal personnel system warranted an exception to the general rule that he should be held responsible for knowing the applicable WGI waiting period, and we granted waiver of his debt.

In Mr. Ragsdale's case, there are no mitigating circumstances such as those in the Cook and Anderegg cases that warrant making an exception to the general rule noted above. As the agency and the Claims Group noted, at the time the erroneous WGI was granted, Mr. Ragsdale had been employed for 6 years at GAO, during which time he received three WGIs, each requiring either a 52-week or 104-week waiting period.[2] He also had received a previous promotion, following which he been required to wait 1 year for his first WGI and 2 years for his second WGI. We believe Mr. Ragsdale's length of service under the general schedule pay system and

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[2]In addition, we note that he had two prior periods of federal service at other agencies, one period of which was for about 1 year and the other for about 6 years.

particularly his experience with WGIs and promotions should have alerted him to a possible problem with his pay when he received the erroneous WGI in February, only 5 months after his promotion, and prompted him to inquire about the matter with appropriate agency officials. If he had done so, the error could have been corrected promptly and 15 months of overpayments would not have occurred. While he states on appeal that he has been confused by his leave and earnings statements for several years, he acknowledges that he knew he received the WGI in February, but assumed it was related to his September 1994 promotion. In view of his experience referred to above, he should have sought clarification, particularly if the leave and earnings statements he received did not explain the questionable pay increase. In these circumstances, we conclude that Mr. Ragsdale is at least partially at fault in this matter. This conclusion precludes waiver of his debt. 5 U.S.C. § 5584(b)(1).

As for the waiver granted the other employee, to which Mr. Ragsdale refers, as the Claims Group noted, each case must be decided on its own merits. See 4 C.F.R. § 91.5(b). In any event, the agency has noted significant differences between the two cases in the employees' length of service and experience with WGIs that justify the different outcomes.

Accordingly, the Claims Group's settlement is sustained.

/s/Lowell Dodge
for Robert P. Murphy
General Counsel