



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Beverly J. Ladmirault

File: B-261303

Date: October 23, 1995

DIGEST

Through administrative error, agency continued to pay employee the increased salary applicable to her former position after her reassignment to a position which did not warrant such an increase. The employee should have been on notice that the new position did not warrant the salary increase. Her failure to make inquiry as to the correctness of her salary constitutes fault on her part. Waiver of the overpayment is denied.

DECISION

Beverly J. Ladmirault, an employee of the Veterans Administration Medical Center, New Orleans, Louisiana, appeals our Settlement Certificate Z-2927648, dated March 30, 1995, denying her waiver of \$1,463.82 salary overpayment. We sustain the denial.

BACKGROUND

Ms. Ladmirault was a registered nurse at the Veterans Administration Medical Center from 1990 until March 18, 1994, when she resigned her position. She had been employed as a critical care nurse in the Intensive Care Unit until September 6, 1992, when she was reassigned to a regular nursing assignment in a ward. While in the status of critical care nurse, she was entitled to increased salary, but, due to an administrative error, the increase continued after her reassignment to the ward. The period of overpayment was from September 6, 1992, to February 20, 1993. The Veterans Administration (VA) notified Ms. Ladmirault of the error on April 21, 1993, at which time she requested waiver of the overpayment, stating that she had no prior knowledge that she had been overpaid.

The Committee on Waivers and Compromises of the Veterans Administration contacted the Personnel Service at the Medical Center and verified that all nurses had received special training during 1991 regarding the pay differential between

critical care and regular nursing assignments. The Personnel Service stated that the average nurse using a reasonable degree of care should have been aware of an error in pay after reassignment to a ward. The Committee on Waivers and Compromises denied the waiver request because of fault in failing to notify VA immediately of the incorrect rate of pay.

Ms. Ladmirault appealed the denial of her waiver request to GAO. Upon our affirmation of the agency's denial, she now appeals our settlement certificate. She maintains there was no intent to defraud or misrepresent, and that she did not receive any special training. She encloses two personnel actions pertaining to her position in the ward which show the higher salary and state the "employee has enhanced qualifications or assignment". Upon appeal, Ms. Ladmirault asks if waiver cannot be granted, might the government share the burden of her debt by splitting the overpayment.

ANALYSIS AND CONCLUSION

In order for overpayments to be the proper subject of a waiver under 5 U.S.C. § 5584, there must be no fraud, misrepresentation, lack of good faith, or fault on the part of the employee or any other interested party. Therefore, if it is determined that a reasonable person, under the circumstances involved, would have made inquiry as to the correctness of payment but the employee did not, then the employee is not free from fault, and the overpayment may not be waived. See, Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988, and decisions cited. Even if, as Ms. Ladmirault claims in her appeal, she did not receive the training in 1991 that the Center's Personnel Service states all nurses received, it would be unusual for a nurse employed in the Center to be unaware of the relationship between position and pay. Her awareness might have come either through the existence of the training on this subject or otherwise. In any event, we believe she can reasonably be held with the knowledge that a change in her level of duties might affect her level of pay. We conclude that Ms. Ladmirault should have known that an error had been made or at least should have questioned the accuracy of her pay level upon her reassignment. Her failure to make inquiry as to the correctness of her salary constitutes fault on her part.

Accordingly, the denial of Ms. Ladmirault's waiver request is sustained. There is no legal basis for the government to share the burden of the overpayment to an employee as Ms. Ladmirault requested.

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