



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: George W. Schlossnagle—Post-1956 Military Service
Deposit

File: B-270151.3

Date: January 16, 1996

DIGEST

The Department of Energy (DOE) erroneously calculated a Post-1956 military service deposit of an employee in 1991 and erroneously informed him then that his deposit had been paid in full for the periods of time involved. The error was not discovered until 1995 and the DOE requests our decision on whether its appropriated funds are available to remedy any portion of its error which will cause the employee to have to pay several thousand more dollars in principal and interest to obtain credit for the military service. We hold that the appropriated funds of DOE are not available for this purpose.

DECISION

The Department of Energy (DOE) requests a decision whether its appropriated funds are available to remedy an error it made in 1991 when it calculated the amount of a Post-1956 military service deposit of its employee, Mr. George W. Schlossnagle.¹ For the following reasons, we hold that the appropriated funds of DOE are not available for this purpose.

BACKGROUND

On June 2, 1991, Mr. Schlossnagle, a civilian employee, transferred from the Department of the Air Force to DOE. On June 25 and August 16, 1991, he applied to DOE under the Post-1956 military service program to make a deposit to his

¹This request was submitted by Mr. Richard H. Nieman, Acting Director, Office of Departmental Accounting and Financial Systems Development, Department of Energy, Germantown, Maryland. Our Office has also received requests for a report on this matter from the Honorable Barbara A. Mikulski, United States Senator, and the Honorable Paul Sarbanes, United States Senator.

retirement account for several prior periods of military service in order to receive credit for that service toward his civilian retirement annuity.²

The DOE calculated Mr. Schlossnagle's deposit amount to be \$7,116.32, based on his military wages for the specified periods at the 3 percent contribution rate for employees covered by the Federal Employees Retirement System (FERS). The FERS rate was used because his payroll records reflected retirement coverage under FERS. Also, under FERS no interest was due at that time. The DOE notified Mr. Schlossnagle of the deposit required, and he paid it on October 18, 1991. On October 22, 1991, the DOE issued Mr. Schlossnagle a letter stating that his deposit for Post-1956 military service had been paid in full.

On May 5, 1995, Mr. Schlossnagle applied to DOE for additional credit toward his civilian retirement annuity for several other brief periods of military service. At that time the DOE discovered that Mr. Schlossnagle had actually been covered by the Civil Service Retirement System (CSRS) rather than the FERS for the military service periods involved prior to 1991. While still employed by the Air Force, Mr. Schlossnagle had elected to change his retirement plan from the CSRS to FERS on December 30, 1990. According to DOE, this information was not made available to its payroll office at the time of the 1991 calculation.

Based on the new information, DOE realized that it had erroneously calculated Mr. Schlossnagle's deposit in 1991. The DOE then recomputed Mr. Schlossnagle's service deposit at the higher 7 percent contribution rate applicable to employees covered under the CSRS plus interest. On July 13, 1995, the DOE notified Mr. Schlossnagle that an additional deposit of \$13,912.48 (consisting of additional principal, interest from 1985 to 1991, and additional interest from 1991 to 1995) was required in order to receive full credit for all periods of military service requested.³

²For the principal statutes involved, see 5 U.S.C. §§ 8332(c), 8334(j), 8411(c), and 8422(e) (1994). The implementing regulations of the Office of Personnel Management are found in 5 C.F.R. §§ 831.2101 to 831.2107 (1995) (for those positions covered by the Civil Service Retirement System), and 5 C.F.R. §§ 842.306 to 842.309 (1995) (for those positions covered by the Federal Employees Retirement System). Further OPM instructions are now found in Chapters 22 and 23 of OPM's CSRS and FERS Handbook for Personnel and Payroll Offices.

³The DOE's report contains the details of this recomputation. For the regulations involved, see 5 C.F.R. § 831.2106(c) (1995), and Chapters 22 and 23 of FPM Supplement 830-1 (Inst. 21 October 30, 1991), now republished as Chapters 22 and 23 of OPM's CSRS and FERS Handbook for Personnel and Payroll Offices.

Mr. Schlossnagle appealed DOE's decision to the Office of Personnel Management (OPM). By a letter, dated August 14, 1995, OPM informed Mr. Schlossnagle that, since he is still an employee of DOE, that Department is responsible for calculating the amount of the deposit required and that he should seek any further explanation from DOE.⁴

On October 13, 1995, the DOE sought a decision of our Office on whether any of its appropriated funds are available to remedy the error it made when it calculated the amount of the deposit in 1991. Mr. Schlossnagle contends that he justifiably relied on the DOE's statement in 1991 that his Post-1956 military service deposit for the periods of time involved had been "paid in full". Because of this, he questions whether he owes any additional amount. In the alternative, he argues that he should not have to pay any additional interest caused by DOE's error. However, the DOE report notes that OPM requires payment of interest to the date of deposit and DOE says it has no authority to waive interest on the deposit.

OPINION

The Post-1956 military service deposit is a voluntary contribution made by an employee to OPM, through the employee's department or agency, in order to receive retirement credit for periods of military service after December 31, 1956. The deposit must be made before the employee retires; otherwise OPM will not grant credit for the military service towards the employee's civilian retirement annuity. The principal statutes involved have been cited in footnote 2, supra. Insofar as relevant to the instant case, 5 C.F.R. § 831.2106(c) (1995) provides:

"(c) If interest is applicable, it shall be computed in accordance with instructions published by OPM in the Federal Personnel Manual."

The Federal Personnel Manual (FPM) instructions referred to in this regulation have now been superseded by Chapters 22 and 23 of the OPM's CSRS and FERS Handbook for Personnel and Payroll Offices (Handbook).⁵ Section K of Chapter 23 of the Handbook provides:

"K. Agency Payment of Interest

"1. Interest Charges Must Be Paid

⁴For the statutes governing employees' appeal rights from administrative actions or orders of OPM concerning CSRS or FERS retirement matters, see, respectively, 5 U.S.C. § 8347(d) and § 8461(e) (1994).

⁵See former FPM Supplement 830-1, Chapters 22 and 23 (Inst. 21, October 30, 1991).

"There is no provision in law or regulation for the waiver of interest charged on military deposit accounts. It is OPM policy that if a remittance is not timely, interest must be charged on the deposit (see 5 CFR 831.105). Agencies should advise employees of this policy so they can take the necessary steps to make timely payments if they want to avoid the additional interest charges.

"2. Agency Payment for the Employee

"If the agency determines that its errors caused the employee to be liable for additional interest, and the agency has authorization to spend monies for this purpose, it may pay, on behalf of the employee, the interest charges caused by its errors."

As OPM's instructions correctly note, there is no provision in law or regulation for the waiver of interest charged on military deposit accounts.⁶ In regard to Mr. Schlossnagle's contention of justifiable detrimental reliance, we note that payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice given by a government employee to a benefits claimant cannot estop the government from denying benefits not otherwise permitted by law. Office of Personnel Management v. Richmond, 496 U.S. 414 (1990). Thus, it is clear that, in order to receive military service credit, Mr. Schlossnagle must pay the additional principal and the interest accrued from 1985 to 1991.

Insofar as the interest from 1991 to 1995 is concerned, section K(2) quoted above, provides that, if an agency determines that its errors caused the employee to be liable for additional interest, and if the agency has authorization to spend monies for this purpose, then it may pay, on behalf of the employee, the additional interest charges caused by its errors. Since the DOE has determined that its error caused Mr. Schlossnagle to be liable for the additional interest from 1991 to 1995, the issue for our resolution is whether the DOE has authorization to spend monies for "this purpose" i.e., payment to OPM of the "additional interest" caused by its error.

The Department of Energy has not pointed to any specific authorization for it to pay the interest and we are not aware of any. The absence of any general authorization was discussed in Clair L. Snydergaard, B-232231, Feb. 23, 1989. In that case an Army employee claimed reimbursement for interest he was charged for making a late deposit into CSRS to obtain credit for post-1956 military service,

⁶Since the principal and interest of these accounts are voluntary contributions, they may not be considered as "erroneous payments" subject to waiver under 5 U.S.C. § 5584 (1994).

allegedly caused by agency error. We held that there was no statutory authority that would allow the agency to expend its appropriated funds on behalf of the employee by paying the interest due on his retirement deposit. We noted that there is no agency obligation under 5 U.S.C. § 8334(j) regarding post-1956 military service and that, once the employee decides to participate, the employee must make the required deposit plus any applicable interest in order to receive credit for the military service.⁷

Accordingly, the appropriated funds of DOE are not available to remedy the consequences of its erroneous calculation and statement to Mr. Schlossnagle in 1991 that his military service deposit had been paid in full.⁸

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

⁷See also David A. Faurot, B-230854, Sept. 1, 1988.

⁸We note that we have not independently verified the amounts required for Mr. Schlossnagle's deposit, as detailed in DOE's report, but we suggest that DOE re-examine its calculations in view of the employee's objections.

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