



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Joan R. Edwards -- Request for Reconsideration of Waiver of an Erroneous Salary Payment

File: B-271616

Date: October 3, 1996

DIGEST

GAO declines to waive collection under 5 U.S.C. § 5584 of an erroneous payment made to a former employee of salary for time that the employee was on "leave-without-pay." The direct deposit into her account of four payments when she was only expecting three should have placed her on notice of both the error, and the need to preserve and inquire of the agency concerning the reason and authority for the extra payment.

DECISION

Ms. Joan R. Edwards requests reconsideration of our Claims Group's action¹ under 5 U.S.C. § 5584, denying waiver of her liability for an erroneous salary payment that the Department of Veterans' Affairs (VA) is trying to collect from her. As explained below, we affirm the Claims Group's action in this matter.

The payment that VA is trying to collect from Ms. Edwards reflects salary paid for pay period 13 of 1993, during which Ms. Edwards was in a "leave-without-pay" status. The record indicates that responsibility for having made this erroneous payment rests upon the VA and its staff. Ms. Edwards was out of the office during that entire pay period. Her time and attendance records for it were completed by other VA employees who mistakenly credited her with having worked that period.

Ms. Edwards argues that her obligation for the erroneous payment should be waived under section 5584 because she has already spent the extra amount and repayment would impose an unfair hardship upon her under these circumstances. She maintains that administrative errors at VA and the United States Postal Service caused her mail to go undelivered or be misdelivered for a period of about 3 months. In her view, this precluded her from realizing that she was not entitled to the payment before she spent it. Ms. Edwards was on annual leave during most of

¹Z-2942408-056, Aug. 25, 1995.

pay period 11, and had previously requested leave-without-pay, for pay periods 12 through 19.² Since VA employees usually receive their paychecks about 1-1/2 weeks after the close of each pay period, she expected to receive two "paychecks" during her hiatus. She also expected to receive a performance incentive award in an unspecified amount during that same period of time. Ms. Edwards maintains that the mishandling of her mail during that period caused her to confuse the "check" she erroneously received (for pay period 13) for one of the "checks" she was already expecting. She writes:

"Mid-July 1993 employee finally receives mail randomly, in turmoil understands VA checks received to be last two pay periods plus an expected incentive check of unknown dollar amount. Paychecks were always about 1-1/2 weeks after end of last pay period. This 1-1/2 week lag plus no mail delivery for over six weeks produced no unexplained increase a reasonable person would question under the circumstances." (Underscoring in original.)

DISCUSSION

Pursuant to 5 U.S.C. § 5584 (1994), this Office may waive claims for overpayment of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Such authority may not be exercised if there is an indication of fraud, misrepresentation, fault, or lack of good faith by the employee or any other person having an interest in obtaining a waiver of the claim. Fault exists if, in light of all the circumstances, the individual concerned should have known that an error existed but failed to take action to have it corrected. In deciding this, we ask whether a reasonable person in the employee's position should have been aware that she was receiving payment more than she was entitled to received. E.g., Paxton A. Parrish, B-252521, Jan. 21, 1994.

Ms. Edwards expected to receive three payments, including two paychecks and one incentive award during the early stages of her time away from work. As she points out, VA salary payments are usually made about 1-1/2 weeks after the close of the pay periods to which they relate. Thus, we presume the two paychecks to which she refers related to pay periods 10 and 11. (This follows from the fact that she was on annual leave during pay period 11 and entered leave without pay at the start of pay period 12.) She also expected to receive a performance incentive award in a

²Before the end of that hiatus, however, Ms. Edwards resigned from her position because she had moved away from her permanent duty station.

(then) yet-to-be determined amount.³ It is undisputed that Ms. Edwards did receive these three payments. It is also undisputed that she received a fourth payment--the erroneous payment for pay period 13--as well.

Ms. Edwards repeatedly refers to these payments as "checks" and implies that the alleged disruption of her mail caused her to receive them late and out of the normal order. This, she suggests, led to her confusion over the number and purposes of payments that she received. However, the records submitted by the VA indicate that these payments were not mailed to Ms. Edwards. Instead, they were, by prearrangement with Ms. Edwards, routinely deposited directly into her bank account as electronic fund transfers (EFT). In informal conversations, the VA staff confirmed our understanding of those records, as well as informed us that each of these EFT payments was deposited into Ms. Edwards's bank account in a regular and timely fashion, unaffected by any disruption of her mail delivery. Thus, while the alleged mishandling of her mail deliveries might have prevented Ms. Edwards from receiving the routine pay and earnings statements that would have explained the amounts and purposes of the payments made to her, it could not and did not prevent her from receiving in her bank account, knowing that she had received, or most importantly, expending any of those payments, including the fourth, unexpected payment. In this regard, we find it significant that Ms. Edwards has not claimed, nor does the record show that, during the period in which these payments were made, she ever inquired about any late or unreceived payments, or attempted to verify the purposes of any of the payments that she did receive, including the fourth, unexpected payment.

The deposit into her bank account of the fourth unexpected payment should have placed Ms. Edwards on notice of the VA's error. It imposed upon her the twin duties to preserve the extra amount and inquire about it. As she did neither, she was clearly at fault and, although it may cause her some hardship to make repayment, her debt may not be waived under 5 U.S.C. § 5584. Dr. Joella Campbell, B-259660, June 8, 1995. Accordingly, the Claims Group's disposition of this matter is sustained.

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

³VA practice then (as now) with respect to the disbursement of incentive awards was to add the amount of such awards to the regular salary payment being processed for the employee at the time of the incentive award.