Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amadeo Martinez, Jr.—Denial of Waiver for Erroneous Payment

File: B-261628

Date: June 13, 1996

DIGEST

1. Waiver is denied for duplicate payments for 288 hours of restored leave. While there are no indications of fraud, misrepresentation, or lack of good faith on the part of the employee, he is not free of fault since he should have been aware that he had received a duplicate payment and been overpaid. The erroneous payment was essentially a duplicate payment within a 2-week period for the same 288 hours of restored leave, and employee had a responsibility to set it aside, available for refund, while pursuing an explanation from responsible agency officials.

2. Employee is indebted in the gross amount of overpayment even though he did not directly receive all these monies which he is indebted to repay, such as taxes, an allotment, health and life insurance, and other amounts that were deducted on his behalf. In the event, however, that the agency is able to directly recoup amounts withheld for the employee, such as life insurance, medicare, state taxes, or other benefits, then the amount of indebtedness owed by the employee shall be diminished accordingly. The matter of the employee's federal income tax liability is under the jurisdiction of the Internal Revenue Service, so the employee should discuss matters involving the withholding of federal income tax with the IRS office which services the area in which he resides.

DECISION

Amadeo Martinez, Jr., a former employee of the Special Accounts Division of the Defense Finance and Accounting Service (DFAS), Columbus, Ohio, appeals our Settlement Certificate[1] denying his claim for waiver of his debt to the United States in the amount of $5,581.44 arising from duplicate payments within a 2-week period for 288 hours of restored leave. For the reasons stated below, we deny waiver.

[1]Z-2942134-025, March 13, 1995.

Background

Mr. Martinez retired from DFAS on January 1, 1994. At the time of his retirement, he was entitled to 288 hours of restored leave, 252 hours of lump sum leave, and 104 hours of use or lose leave. On or about January 15, 1994, he received a payment via electronic transfer of funds into his bank account reflecting 252 hours of lump sum leave in the gross amount of $4,883.76, and 288 hours of restored leave in the gross amount of $5,581.44. He received a leave and earnings statement with this payment. After deductions, the net combined amount for the 540 hours leave was $6,352.56. A few days later, a hard copy U.S. Treasury check No. 63065359 dated January 20, 1994, was issued to him for the same 288 hours of restored leave in the gross amount of $5,581.44, as well as an additional payment for 104 hours of use or lose leave in the gross amount of $2,015.52. After deductions the net total was $4,713.91.

In both the electronic funds transfer and the hard copy check, the gross amount reflecting 288 hours of restored leave was identical, i.e., $5,581.44. Agency officials informed Mr. Martinez by letter dated July 18, 1994, that he had incurred a debt for the erroneous payment in the net amount of $3,040.59 for the duplicate payment of 288 hours of restored leave. Mr. Martinez requested that the agency waive this amount on the basis that he was not aware of the overpayment.

DFAS denied Mr. Martinez' request for waiver of overpayment in the net amount of $3,040.59, and Mr. Martinez appealed to our Office which determined that Mr. Martinez had been overpaid in the gross amount of $5,581.44 and denied waiver of this amount on the basis that Mr. Martinez was partially at fault for failing to make prompt inquiry to appropriate agency officials about the duplicate payments. Mr. Martinez now appeals the denial. Essentially, he reiterates his prior contention that he was unaware of the duplicate payment until he was asked to return it.

Analysis

Under the provisions of 5 U.S.C. § 5584 (1994), the Comptroller General may waive, in whole or in part, a claim arising out of an erroneous payment of pay to an employee if there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee and when the collection thereof would be against equity and good conscience and not in the best interests of the United States. Richard C. Clough, 68 Comp. Gen 326 (1989).

While there are no indications of fraud, misrepresentation, or lack of good faith on the part of Mr. Martinez, we do not find that he is free from fault. The erroneous payment Mr. Martinez received was a duplicate payment within a 2-week period for the same 288 hours of restored leave. When an employee receives a significant unexplained or duplicate payment, he has a responsibility to set it aside, available

for refund, while pursuing an explanation from responsible agency officials, particularly when the employee should have been aware of the strong possibility that he had received a duplicate payment and been overpaid. Gary A. Richardson, B-253636, Apr. 20, 1994. See also, Mark F. Jones, B-202136, July 20, 1981.

When Mr. Martinez received a hard copy check in the net amount of $4,713.91, purportedly for 104 hours of use or lose leave, he should have been alerted to the possibility of an error since he had just received an electronic funds transfer in the net amount of $6,352.56 a few days earlier for 288 hours of restored leave and 252 hours of accumulated leave. He should have inquired why he had received such a large net amount for only 104 hours of leave that nearly equaled the amount he had received a few days before for 540 hours of combined restored and accumulated leave. Instead, he took no action whatsoever until DFAS notified him of the error 6 months later. While Mr. Martinez insists that he acted innocently, his failure to inquire about the duplication of payments makes him partially at fault in the matter, and his request for waiver is denied.

As to the amount of the indebtedness, while Mr. Martinez did not receive directly all the monies which he is indebted to repay, such as the taxes, an allotment, health and life insurance, and other amounts that were deducted on his behalf, the withheld amounts were for his benefit and do not reduce the amount of his indebtedness. Charles R. Ryon, Sr., B-234731, June 19, 1989. See also, Mark F. Jones, supra, and Saburo Nishikawa, B-190531, Apr. 3, 1978. In the event, however, that the Defense Finance and Accounting Service is able to directly recoup amounts withheld for Mr. Martinez, such as life insurance, medicare, state taxes, or other benefits, then the amount of indebtedness owed by Mr. Martinez may be diminished accordingly. The matter of an individual's federal income tax liability is under the jurisdiction of the Internal Revenue Service (IRS), so that Mr. Martinez should discuss matters involving his withholding of federal income tax liability with the IRS office which services the area in which he resides. Mark F. Jones, supra.

Thus, we affirm our prior determination that Mr. Martinez is indebted in the gross amount of $5,581.44, less any amounts DFAS is able to directly recoup.

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