Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phyllis J. Wright -- Waiver Appeal

File: B-272194

Date: August 27, 1996

DIGEST

An employee switched from a regular work schedule to a compressed work schedule, but due to administrative error, began to receive overtime pay for extra hours worked on days that were in excess of 8 hours. Although her leave and earnings statements identified the payments as overtime, she asserts that she thought that the payments were for specialty pay due her because of her duties that had been improperly identified. Failure to make inquiry of appropriate officials regarding the accuracy of her pay is sufficient to make her partially at fault in the matter, thus precluding waiver of her debt. 5 U.S.C. § 5584(b) (1994).

DECISION

This decision is in response to a request from Ms. Phyllis J. Wright, appealing Settlement Z-2943306, April 29, 1996, which sustained her employing agency's denial of waiver of her debt to the United States in the amount of $4,259.84. We conclude that the denial of waiver was correct, for the following reasons.

Ms. Wright, a licensed practical nurse employed by the VA Medical Center in Salem, Virginia, changed her work schedule from a regular to a compressed workweek beginning May 29, 1994. Although she only worked a 40-hour workweek and did not actually work overtime, she was erroneously paid overtime for extra hours worked on days that were in excess of 8 hours. As a result, she was overpaid $4,259.84 during the period from May 29, 1994, through January 7, 1995.

The record shows that Ms. Wright regularly received biweekly leave and earnings statements during the period of the overpayment clearly identifying the additional payments as compensation for overtime hours. Our settlement denying waiver was based on the determination that since Ms. Wright did not actually work overtime hours during this period, she should have questioned the extra payments by bringing them to the attention of the appropriate officials.

Ms. Wright admits that she did examine her leave and earnings statements and discussed receipt of the money with several other nurses similarly situated. She

and the others came to the conclusion that the extra money was for specialty pay that she contends had been previously mentioned to her, and that it was simply marked as overtime on her leave and earning statement because there was no other place to put it. She also claims that the change in her pay also took place at a time when she was due a step increase in her pay.

Waiver of debts under 5 U.S.C. § 5584 (l994) is an equitable remedy. As such, waiver must depend on the facts in each case, since by statute "an indication of. . . fault. . .on the part of the employee" precludes waiver.[1] Fault, as used in 5 U.S.C. § 5584, is considered to exist if it is determined that an employee exercising reasonable diligence should have know that an error existed, but failed to take corrective action.[2] The standard employed is whether a reasonable person should have been aware of receiving payment in excess of the proper entitlement.[3]

We recognize that erroneous payments usually arise as a result of mistakes by those who are charged with the administrative responsibility for making the payments. However, where the payment made is in excess of the amount authorized to be paid, the government has the right to recover the excess amount. We have held that an employee who knows or should know that she has received an overpayment should be prepared to return any overpayment received and it is not against equity or good conscience to collect an overpayment to such a person.[4] We have also held that financial hardship does not provide a basis to grant waiver of an indebtedness.[5]

In the present case, we have been informed by the payroll section of the medical center in Salem, Virginia, that there is no "specialty pay" available for licensed practical nurses, as asserted by Ms. Wright. However, licensed practical nurses are entitled to a special salary rate represented as a percentage increase in their annual basic pay. The record shows that Ms. Wright was properly receiving that increased pay well before the payment of the erroneous overtime compensation had begun. The record also shows that her step increase did not coincide with the initial payments of erroneous overtime compensation. Her step increase did not become effective until October 2, 1994, nearly 4 months after the erroneous overtime payments had begun. Therefore, since Ms. Wright has admitted being aware that she was receiving additional compensation identified on her leave and earnings

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[1]5 U.S.C.§ 5584(b) (1994)

[2]4 C.F.R. § 91.5 (1995)

[3]George R. Beecherl, B-192485, Nov. 17, 1978.

[4]Hawley E. Thomas, B-227322, Sept. 19, 1988.

[5]Dr. Joella Campbell, citing to David L. Williams, 70 Comp. Gen. 699 (1991).

statements as overtime, she should have made inquiry with the medical center payroll section to clarify her entitlement, rather than simply discussing it with other nurses. Accordingly, it is our view that Ms. Wright must be deemed to be partially at fault in the matter and our settlement action dated April 29, 1996, denying waiver is sustained.

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

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-272194

August 27, 1996

The Honorable John Warner
United States Senator
1003 First Union Bank Building
213 South Jefferson Street
Roanoke, Virginia 24011-1714

Dear Senator Warner:

This is in response to your letter dated May 24, 1996, enclosing correspondence from Ms. Phyllis J. Wright, appealing settlement Z-2943306, Apr. 29, 1996, which denied waiver of her debt to the United States incident to the overpayment of compensation.

By decision B-272194, dated today, copy enclosed, we sustain the denial of waiver in Ms. Wright's case because, upon receipt of her leave and earnings statements showing the extra payments, she should have made inquiry of appropriate officials in the medical center payroll section about her entitlement. Since she failed to do so, she is deemed to be partially at fault in the matter, thus precluding waiver under 5 U.S.C. § 5584(b) (1994).

We trust, this will serve the purpose of your inquiry.

Sincerely yours,

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

Enclosure