

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-221605

DATE: May 19, 1986

MATTER OF: Alton L. Hawkins - Erroneous Overpayment  
of Merit Pay - Waiver**DIGEST:**

A GM-13 merit pay employee was granted a pay increase in 1981, shortly after merit pay was initiated in his agency. Due to administrative error, his annual pay rate was incorrectly established at a rate in excess of his individual entitlement, and also in excess of the maximum rate of GS-13. Waiver was disallowed for entire overpayment on basis he should have been aware of error and was, thus, at fault since his leave and earnings statement specifically noted his annual pay rate to be in excess of his entitlement. Waiver is granted and the employee is not held at fault where the record indicates that he did not know, at the time of the overpayment, that the rate for a GM-13 cannot exceed the maximum rate of a GS-13, and where he contacted his payroll office and was assured his pay was correct.

This decision is in response to correspondence from Mr. Alton L. Hawkins, appealing settlement Z-2858741-026, dated August 6, 1985, which disallowed waiver of an overpayment of compensation in his case. We conclude that waiver is to be allowed for the following reasons.

The record shows that effective October 11, 1981, Mr. Hawkins, an employee with the Defense Logistics Agency in grade GM-13, was granted a merit pay increase. Due to administrative error, instead of his pay rate being established at \$42,793, it was incorrectly established at \$43,793, which rate exceeded the maximum rate authorized for grade GM-13 (\$43,666). In August 1982, the error was discovered and it was determined that he had been overpaid \$806.40 for the period October 11, 1981, through July 31, 1982.

Following a notice of debt, Mr. Hawkins sought waiver. His asserted basis for waiver was lack of familiarity with

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the salary setting provisions of the Merit Pay Act, which went into effect in his agency in 1981. In this connection, he asserted that while he attended a 3-day training session on merit pay, its primary focus was performance standards and performance appraisals with little information regarding pay actually given. In addition, he has asserted that when he received his leave and earnings statement for the pay period ending November 21, 1981, he noted that his net pay was significantly greater than before. Upon notifying his payroll office, he was informed that the amount was correct since it included his retroactive pay increase.

Mr. Hawkin's waiver request was disallowed by our Claims Group on the basis that in conjunction with the training sessions he attended, the training package which he received contained information regarding pay setting and grade and pay retention. Further, the material provided stated that "no merit pay employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate of the employee's grade." Based on that, it was concluded that since his leave and earnings statement specifically provided information showing a rate of pay in excess of the maximum entitlement for anyone in his grade, he must be deemed to be partially at fault, thus precluding waiver under the statute.

Section 5584 of Title 5, United States Code (1982), provides that overpayment of pay and allowances may be waived, in whole, or in part, if collection would be against equity and good conscience and not in the best interest of the United States. However, waiver is not to be granted if, in the opinion of the Comptroller General:

"\* \* \* there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee \* \* \*."

Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, waiver hinges on whether Mr. Hawkins is found to be at fault.

Fault, as used in the statute authorizing waiver, is considered to exist if it is determined that the concerned individual should have known that an error existed but failed to take action to have it corrected. 56 Comp. Gen. 943 (1977). If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to take corrective action he is not without fault and waiver will not be granted. Hollis W. Bowers, B-219122, January 22, 1986. Thus, if an employee receives Earnings Statements, coupled with receipt of other information, the employee has notice of an error and is ordinarily considered to be partially at fault if he fails to take corrective action. Rosalie L. Wong, B-199262, March 10, 1981.

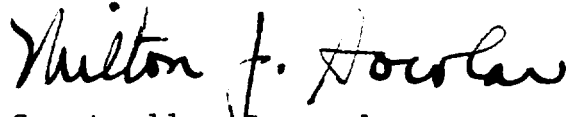
We do not believe that fault may be imputed to Mr. Hawkins so as to preclude waiver. The record shows, and Mr. Hawkins admits that he attended a training session in July 1980 on the merit pay performance appraisal system. However, he states that he received only a brief overview of the merit pay system, and the various plans that were being considered. The record does not indicate exactly what he received at the training session; however, we note that a draft letter outlining the agency's performance appraisal system was not issued until after the training session on December 22, 1980. We also note that it was directed to heads of various staff elements and field activities. Thus, there is no indication that it was distributed to the employees, such as Mr. Hawkins, who participated in the program. In fact, the only detailed guidance in the record directed to all merit employees is dated September 17, 1982, and postdated the discovery of the erroneous overpayments. This evidence seems to support Mr. Hawkins statement that he did not know, at the time of the overpayment in November, 1981, that "this meant a GM-13 cannot exceed a GS-13 in maximum rate."

As stated previously, Mr. Hawkins did receive a memorandum outlining the application of the merit pay fund. However, this was apparently distributed on or about the time Mr. Hawkins received his first merit pay paycheck. Mr. Hawkins contacted his payroll office when he noticed an increase and was advised that his pay was correct since it reflected a retroactive comparability

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pay increase. When Mr. Hawkins' next paycheck decreased he thought nothing further about it until August 1982, when it again decreased upon discovery of the error.

Accordingly, under these circumstances, we feel that Mr. Hawkins is without fault, and waiver is hereby granted.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in black ink and is positioned above the typed name.

Acting Comptroller General  
of the United States