

DOCUMENT RESUME

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[Pay and Allowances Received after Retirement from the Air Force]. B-188251. May 13, 1977. 3 pp.

Decision re: Brig. Gen. William R. Harpster; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: Veterans Benefits and Services (700).

Organization Concerned: Department of the Air Force.

Authority: 10 U.S.C. 2774. B-184514 (1975).

A retired Air Force brigadier general appealed a GAO decision denying his request for waiver of the claim of the United States against him for pay and allowances paid to him for more than a month subsequent to his release from active duty. The retiree should have realized that the payment was erroneous, and the indebtedness which arose as a result was not waived.  
(Author/SC)

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*M. J. Self  
M. L. Parr*

**DECISION**



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

MAY 13 1977

**FILE: 3-188251**

**DATE:**

**MATTER OF: Brigadier General William R. Harpster, USAFR,  
Retired**

**DIGEST: Retired Air Force member who received pay and allowances for period of more than a month subsequent to release from active duty should have realized payment was erroneous and the indebtedness which arose as a result may not be waived.**

This action is in response to a letter dated March 22, 1976, from Brigadier General William R. Harpster, USAFR, Retired, 314-16-3145, which constitutes an appeal to action by our Transportation and Claims Division (now Claims Division), dated December 9, 1975, which denied his request for waiver of the claim of the United States against him in the amount of \$2,613.35, which arose incident to his service in the United States Air Force.

The record shows that General Harpster was ordered to active duty for training for the period July 9-22, 1972. He was hospitalized on July 12, 1972, and was continued in a pay status until released from active duty on August 25, 1972. As a result of administrative error, he continued to receive pay and allowances through September 30, 1972, in the gross amount of \$2,613.35, with \$619.76 withheld for Federal income tax purposes.

General Harpster's request for waiver was denied on the basis that while there was no indication of fraud or misrepresentation on his part and he had initiated action to clarify the situation upon receipt of the first erroneous payment, there was evidence to show that he was reasonably aware at that time that there was no entitlement to active duty pay and allowances subsequent to his release from active duty and he could not in good faith have expected to retain or expand such erroneous payments.

General Harpster contends that he reported the first overpayment to the appropriate Reserve finance clerk as early as September 5, 1972; that he had telephone conversations and wrote letters to stop the payments; and that he began to doubt his original supposition of nonentitlement and believed that he was in fact entitled to the pay.

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Section 2774 of title 10, United States Code, provides in part:

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation allowances, made before or after the effective date of this section, to or on behalf of a member or former member of the uniformed services, as defined in section 101(3) of title 37, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General \* \* \*

\* \* \* \* \*

(b) The Comptroller General \* \* \* may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim \* \* \*

The word "fault" as used in 10 U.S.C. 2774, has been interpreted as including something more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements. See B-104514, September 10, 1975.

In this case, while General Harpster indicates that the time-related pressures of recovering from illness were sufficient to

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justify acceptance of the overpayments, by his own admission he had enough doubt concerning his entitlement to the payment to make inquiries concerning it. His initial application for waiver (AFMPC Form 9-689) dated July 23, 1974, states that he was aware prior to notification that entitlement to the additional payments was questionable. Thus, while he expresses a belief that continuation of the payments through September 30, 1972, indicated that he was, in fact, entitled to such payments, it is our view that in the circumstances, the payment should have been questioned at least until a more definite administrative determination and statement had been made to him concerning entitlement.

It is apparent that a significant error was made by the Air Force in issuing the payment to General Harpator subsequent to his release from active duty, contrary to established directives. However, it is our view that an error, no matter how significant, does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments which should be readily recognized as such.

Therefore, it is our view that a member of his grade and with his years of service should have been aware that he was not entitled to receive active duty pay for any period subsequent to his release from that duty. Further, on receiving payment, he should have retained the amount received until the reason for it had been adequately explained.

Accordingly, the action of our Claims Division in denying his request for waiver is sustained.

R.F.KELLER

Acting Comptroller General  
of the United States