

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

DLM-11

10,809

FILE: B-195252

*per name*  
DATE: July 19, 1979

MATTER OF: Edward R. Hollyfield

*However, he*  
DIGEST: A former Navy officer's debt resulting from an erroneous payment of basic allowance for subsistence when an accounting error in placing a decimal point resulted in an overpayment in excess of \$1,000 in his pay at discharge may not be waived since he knew or should have known from the size of the overpayment and the fact that he was receiving an estimated payment that an error had been made. Such knowledge on his part carried with it an obligation to bring the matter to the attention of the appropriate officials and to return the excess sum or to set it aside for refund at such time as the accounting error was corrected.

*[Request for*

The issue presented in this case upon an appeal of our Claims Division's denial of a waiver is whether waiver of an erroneous payment of basic allowance for subsistence (BAS) may be granted under 10 U.S.C. 2774 (1976) in the circumstances described. The answer is no since we find that the recipient of the overpayment should have been aware of the strong possibility he had been overpaid and should have been prepared to refund the amount due.

Mr. Edward R. Hollyfield, a former lieutenant in the United States Navy, while serving on active duty was entitled to receive BAS from July 1, 1975, through September 12, 1975, the date of his scheduled separation from the Navy, a total of \$121.24. Through an administrative error there was a shift in the decimal point and he was erroneously credited with \$1,212.48 on his final pay record. This resulted in an overpayment of \$1,091.24 at the time of his separation which was later reduced to \$795.80 due to a credit of additional pay and allowances found due him. Mr. Hollyfield actually received \$3,773.46 as a final payment of pay and allowances upon discharge. The erroneous payment resulted from an administrative error with no indication of fraud, or misrepresentation on the part of the member or any other person having an interest in the matter.

~~005929~~

B-195252

Mr. Hollyfield asserts that his pay records were mailed to the Navy Finance Center, Cleveland, before his discharge and that when he received a check in a lump sum for all of his unpaid pay and allowances, he was unaware that he had been overpaid the sum of \$1,091.24. It was not until several months later, March 1976, upon inquiring about a claim for arrears of pay for the period September 13 to September 19, 1975, a period in which his separation from the Navy was delayed by a medical examination, that the erroneous payment was brought to his attention. Mr. Hollyfield acknowledges, however, that the final payment he received exceeded the maximum he had expected by almost \$500. We also note that at the time of his discharge he signed a statement acknowledging that the payment he received was an estimated amount, and that final payment or collection action would be made by the Navy Finance Center.

Section 2774 of title 10, United States Code (1976) authorizes the Comptroller General to waive certain claims—

" \* \* \* the collection of which would be against equity and good conscience and not in the best interest of the United States \* \* \*"

However, the law also provides that the Comptroller General may not exercise that waiver authority—

"if, in his opinion, there exists, in connection with the claim, an indication of \* \* \* fault, or lack of good faith on the part of the member \* \* \*"

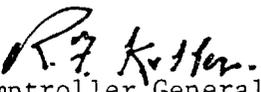
We interpret the word "fault" as used in 10 U.S.C. 2774, as including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements. B-191757, July 24, 1978.

At the time of his discharge Mr. Hollyfield was serving as an officer (O-3) and had completed 7 years, 3 months and 5 days of active duty. Considering his officer status and the length of his

B-195252

service it is not unreasonable to assume that he knew or should have known his approximate pay entitlement and should have recognized when he received his final pay and allowances that he had been overpaid, particularly when the size of the net overpayment was \$795.80. It would appear that Mr. Hollyfield had some idea that he had received an overpayment since he claims that he had been expecting between \$3,000-\$3,300 as a final payment, and he acknowledged at the time of discharge that he was receiving only an estimated payment subject to later correction by the Finance Center. It was therefore incumbent upon him to bring this matter to the attention of the proper officials since even by his own calculations the final payment of \$3,773 was \$473 more than the maximum he indicates he had expected. This he did not do. Therefore, we cannot conclude that he was not without fault in the matter for not reporting the suspected overpayment. At the very least he should have set the amount aside for refund at such time as the accounting error was corrected. See B-183460, May 28, 1975, and B-191757, supra. In these circumstances the fact alone that Mr. Hollyfield may incur some financial hardship in repaying the debt is not sufficient for us to authorize waiver.

Accordingly, the action taken by our Claims Division denying waiver is sustained, and Mr. Hollyfield should make prompt arrangements to settle his debt.

  
Deputy Comptroller General  
of the United States