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DECISION



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

FILE: B-195257

DATE: August 17, 1979

MATTER OF: Petty Officer Charles W. Mancill, USN

Personal Name

DIGEST: When a service member moves into Government quarters [entitlement to basic allowance for quarters and housing] allowance should terminate. In this case, however, due to administrative error payments were continued for a substantial period resulting in the member's indebtedness. Although member states he made inquiries concerning the correctness of his pay, it cannot be held that he was without fault since the amount was substantial and he should have pursued his inquiries.

This action is the result of an appeal from an action by our Claims Division denying a request for waiver by Charles W. Mancill, U.S. Navy, under 10 U.S.C. 2774, of a claim of the United States against him arising out of erroneous payments of basic allowance for quarters (BAQ) and station housing allowance.

For the following reasons we must sustain the action of our Claims Division.

The records show that Petty Officer Mancill while stationed at Kaneohe, Hawaii, was assigned to Government quarters on September 6, 1974. Prior to this time, he was entitled to BAQ and a station housing allowance, at the rate of \$146.40 per month (BAQ) and \$130.50 per month (housing allowance). As a result of moving into Government quarters his entitlements should have been decreased by \$276.90 per month, since these allowances are not payable while a member and his dependents occupy Government quarters. See 37 U.S.C. 403(b) and 405. Through administrative error payment of these allowances was not discontinued and the payments continued until August 7, 1977, when they totaled \$10,957.80.

The report from the Navy indicates that there is no indication of fraud, misrepresentation, or lack of good faith on the part of Petty Officer Mancill. Further, he states that he was assured on several occasions that his pay and allowances were correct when he made inquiries as a result of his own doubts concerning the correctness of his pay. The Navy report states that numerous changes took place on the member's pay account during the overpayment period;

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however, if he had requested a written breakdown of his entitlements the erroneous payment would have been evident. The report also states that at the time of the overpayments Petty Officer Mancill was employed in the Personnel/Administrative Office and had a great deal of contact with the disbursing function. The report recommends that waiver be denied since it is the Navy's view that he was remiss in not taking the proper steps to insure that his pay was properly computed, particularly in view of his own doubts concerning the correctness of his pay.

Under the authority of 10 U.S.C. 2774 (1976) a claim arising out of erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services may be waived if collection would be against equity and good conscience and not in the best interest of the United States. This authority may not be exercised if 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. 10 U.S.C. 2774(b)(1).

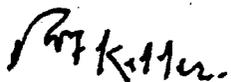
The word fault, as used in 10 U.S.C. 2774, has been interpreted as including something more than a proven overt act or omission by the member. Thus, we have considered fault to exist if under the circumstances it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements. See Paul G. Kiewert, B-185535, April 21, 1976; and John J. Carson, Jr., B-184514, September 10, 1975.

In the present case, the termination of BAQ and housing allowance should have caused Petty Officer Mancill's pay to decrease by \$276.90 per month, a substantial portion of his total pay, and the absence of such a decrease in pay should have been readily apparent. Furthermore, we have consistently held that where a member knows or should have known of the erroneous payments he is obligated to promptly bring the matter to the attention of the appropriate officials and to retain the excess amounts for subsequent refund to the Government. See Steven M. Zundell, B-191757, July 24, 1978, and decisions cited therein. If the member fails to do so, it cannot be said that he was without fault in this matter and the claim may not be waived. Finally, the fact that

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the member may incur some financial hardship in repaying the debt is not sufficient for our Office to authorize waiver.

Accordingly, the action of our Claims Division in denying Petty Officer Mancill's request for waiver must be sustained.


Deputy Comptroller General
of the United States