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Mr. Kagan
PLM-11



DECISION

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

FILE: B-194233

DATE: September 12, 1979

MATTER OF: Petty Officer Christopher C. Robbins, USN

AGC 00001

DIGEST: Although Navy enlisted member received a substantial increase in his monthly pay for 5 months due to erroneous payments of basic allowance for quarters (BAQ), and brought the matter to the attention of the disbursing clerks who assured him that his pay was correct, the member is not without fault in this situation since any unexplained substantial increase in his pay should have alerted him to the possibility that he was being overpaid and he should have pursued matter until a satisfactory explanation had been given. Therefore, waiver of the debt is denied.

By letter of January 4, 1979, Petty Officer Christopher C. Robbins, USN, requests reconsideration of our Claims Division's denial of his request for waiver of the claim ~~of the United States against him~~ ^{debt} arising out of erroneous payments of ~~basic allowance for quarters (BAQ)~~ ^{BAQ} received incident to his service in the United States Navy. For the following reasons Mr. Robbins' request for waiver must be denied.

Mr. Robbins' debt arises from erroneous payments of BAQ at the with dependent rate made to him during the period July 1, through November 30, 1976, while he was occupying Government quarters. See 37 U.S.C. 403(b). The erroneous payments were caused by administrative error when Mr. Robbins' pay account was converted to the Joint Military Pay Systems (JUMPS).

Our Claims Division after considering the Navy report on the matter, which did not recommend waiver, denied the request for waiver on the basis that when Mr. Robbins received his paycheck on July 15, 1976, in the amount of \$321 he should have requested a full pay breakdown to verify the amount since his previous paycheck was for \$180. Failure to do so caused him to be partially at fault.

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Mr. Robbins contends that between July 1976, and August 1976, he checked with the disbursing clerks three times and was assured that he was entitled to the monies paid. Based upon these assurances he did not pursue the matter after August 1976. In addition, Mr. Robbins argues that during the 6 months prior to the start of the overpayments several changes had occurred to his pay entitlements causing fluctuations in his paychecks. These fluctuations, he contends, were significant factors in his accepting the assurances from the disbursing clerks. He also contends that during the period of overpayments he could not determine whether he was being overpaid since he did not receive leave and earnings statements for several months. He also states that when he did receive statements they indicated that he was not receiving BAQ and that the amounts he actually received were not reflected on the statements.

The Comptroller General may waive a claim of the United States if its collection would be against equity and good conscience and not be in the best interest of the United States. 10 U.S.C. § 2774 (1976). The claim may not be waived, however, if in the opinion of the Comptroller General there exists an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the claimant. 10 U.S.C. § 2774(b)(1) (1976).

In this regard, the member received a substantial unexplained increase in pay in July 1976 (\$180 to \$321) and continued to receive a higher rate thereafter. Although he states that he checked with disbursing clerks concerning the correctness of his pay, it is our view that he should have pursued the matter until an explanation concerning the increase had been received. Also, the fact that when he did receive leave and earnings statements which did not reconcile with the pay he was receiving, he should have requested an accounting.

Furthermore, while we note that he did receive increases in his pay during the 6 months preceding the erroneous payments, these increases were readily explainable due to his promotion and longevity increase. We see no reason why the member should have expected any further increases since these transactions had already been reflected in his pay.

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Under the waiver provision the word "fault" has been interpreted as including something more than a proven overt act or omission by the claimant. It is considered to exist if in light of all the facts it is determined that the claimant should have been aware that he was receiving payments in excess of his proper entitlements. In this regard, we have taken the position that substantial and inexplicable changes in pay constitute sufficient notice to alert a reasonable person that an error may have been made. See Matter of Paul G. Kiewert, B-185535, April 21, 1976.

Accordingly, we cannot conclude that Petty Officer Robinson was without fault in the matter and the action taken by our Claims Division must be sustained.


Deputy Comptroller General
of the United States