

12069 *PLM IV*
McGhee



DECISION

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

FILE: B-196226

DATE: November 20, 1979

MATTER OF: Petty Officer Robert R. McGhee, Jr., USN

DIGEST: A service member erroneously paid BAQ during a period he occupied Government leased housing, may have the debt waived for the first 3 months during which he began a new duty assignment, moved into leased quarters, his pay account was converted to JUMPS and his Leave and Earnings Statements (LES's) were incomplete. However, when he failed to request a complete explanation of his pay after doubting the accuracy of his LES's, he is not without fault in the matter so as to permit waiver of subsequent erroneous payments. Further, financial hardship, alone, resulting from collection is not a sufficient reason to retain the payments that he should have known did not belong to him.

Request for Waiver of Debt Resulting From

Petty Officer Robert R. McGhee, Jr., USN, requests reconsideration of our Claims Division's July 20, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$2,841. The debt arose from erroneous payments of basic allowance for quarters (BAQ) made to him while occupying Government leased housing. Waiver is granted for erroneous payments made for 3 months when the error was not apparent, and denial of waiver for the succeeding period is sustained. *Account*

The record shows that Mr. McGhee occupied Government leased housing on December 1, 1976. Due to administrative error, the disbursing officer failed to stop payment of BAQ to which Mr. McGhee was not entitled while occupying Government furnished quarters. 37 U.S.C. 403(b) (1976). As a result he was erroneously paid BAQ for the period December 1, 1976, through February 28, 1978, in amounts ranging from \$183 to \$202.20 per month.

Mr. McGhee, in his original request for waiver, indicated that his pay account was converted to the computerized Joint Uniform Military Pay System (JUMPS) in December 1976, at about the same time he began new duties as a Navy recruiter in Danville, Kentucky. He says that at that time also, the landlord of the Government leased housing he was assigned to was

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complaining to him of not being paid and he had to check on the arrangements for those payments. He also contended that he questioned the accuracy of his leave and earnings statements (LES's) for December 1976 and January 1977 and was advised by his supervisor that the LES's were not "competent or complete" and they could not be relied upon. His supervisor, Chief Florea, essentially confirms this. Mr. McGhee also says he was told his pay was in order in every aspect, and that since his pay increased during 1977, he did not suspect that he was being overpaid.

On about March 2, 1978, after calculating his pay and determining the possibility of error, he notified the payroll clerk in disbursing who determined that BAQ was not deducted. In his appeal, he also contends in essence that in 1976 he had no trouble with his pay until JUMPS went into effect, and that he cannot afford to pay the debt.

Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts when collection would be against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) precludes waiver 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 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 of 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 entitlement. See decision B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, Mr. McGhee's pay account was converted to JUMPS at the time he started a new assignment as a Navy recruiter in December 1976 and he then received a different form of LES. Further, the Government did not make payment for

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payments made for the period March 1977 through February 1978
is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States