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DECISION

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

[Request for Waiver of Debt]

FILE: B-196637

DATE: February 27, 1980

MATTER OF: Petty Officer Henry T. Howard, USN

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DIGEST: A service member who was paid BAQ during a period he occupied Government housing whose bimonthly pay was not appropriately reduced should have known that the payment was erroneous and he may not have his debt waived. Further, financial hardship alone resulting from collection is not sufficient reason for a member to retain payments that he should have known did not belong to him.

Petty Officer Henry T. Howard, USN, requests reconsideration of our Claims Division's July 9, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$6,358.22. The debt arose from erroneous payments of basic allowance for quarters (BAQ) made to him while occupying Government quarters in San Diego, California. The denial is sustained.

The record shows that Mr. Howard occupied Government quarters on December 10, 1973. Due to administrative error, the documents assigning him to these quarters were not received by the disbursing officer and payment of BAQ to which Mr. Howard was not entitled while occupying Government quarters was not stopped as it should have been. 37 U.S.C. 403(b) (1976). As a result he was erroneously paid BAQ for the period December 10, 1973, through April 26, 1977, in amounts ranging from \$136.60 to \$183 per month.

Mr. Howard, in his original request for waiver, indicated that after he was assigned Government quarters in December 1973 his net pay decreased in an amount equal to half of his current BAQ and that he assumed there was no difficulty on the part of the local housing office in notifying his disbursing officer of the appropriate pay action. Further, he stated that he visited the housing office on June 10, 1974, in an attempt to move to better quarters and was informed that the appropriate paperwork to stop his BAQ had been executed the previous December when he moved into the quarters. He also

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stated that his only knowledge of the matter was when he noticed that his pay decreased in 1973 and when he was assured in June 1974 that BAQ had been stopped. In his appeal, he further contends that at his request in June 1974 the disbursing officer was furnished a copy of the stop BAQ order and he was assured by the disbursing office that his pay was accurate and had been accurate in the past, that he did not know or suspect that he was being overpaid, and that payment of the debt will result in extreme financial difficulty and hardship.

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 decisions B-184514, September 10, 1975, and B-193363, August 8, 1979.

In the present situation, Mr. Howard was entitled to receive BAQ when he vacated Government quarters in the Philippines and moved to San Diego in October 1973. Therefore, including BAQ he received a bimonthly net pay increase from \$257 to \$437. However, when he returned to Government quarters on December 10, 1973,

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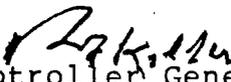
he should have expected his bimonthly payments to decrease approximately \$70, for BAQ alone, each pay period. In addition, in November 1973, he had increased his savings allotment from \$42 to \$116 each month and drew one month's advance pay of \$480 to be repaid \$80 monthly beginning in December 1973. His net bimonthly payment was reduced to \$246 on December 15, 1973. Although Mr. Howard contends that he considered the reduction was a result of occupying Government quarters, it should have been apparent to him that the amount of reduction was insufficient to include deductions for an increased savings allotment and repayment of the advance pay, as well as the loss of a BAQ payment.

Although Mr. Howard certified his occupancy of Government quarters annually and may have questioned the accuracy of his pay, he should have known that he was receiving substantially more pay than he was entitled to, and he should have requested a complete explanation of his pay rather than verbal assurances that it was accurate. Since the correctness of the payments received after December 10, 1973, were so doubtful, he should have, at a minimum, set aside these excessive amounts until a definite determination and statement had been made to him fully explaining the entitlement.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein. Financial hardship alone, resulting from collection, is not a sufficient reason to retain the payments he should have known did not belong to him. B-183460, May 28, 1975; B-192380, November 8, 1978.

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In these circumstances we are unable to conclude that Mr. Howard is free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States. Accordingly, the action of our Claims Division denying waiver is sustained.


Deputy Comptroller General
of the United States