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DECISION

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

[Reconsideration of Debt Waiver Denial]

FILE: B-197800

DATE: July 7, 1980

MATTER OF: Mrs. Julia N. Barratt

DIGEST: A Survivor Benefit Plan annuitant received a substantial overpayment of the annuity which she knew was erroneous. Although she advised the Finance Center that she believed she was being overpaid, waiver of her debt may not be granted because she knew the payment was erroneous and she should be prepared to refund it.

This action is in response to a letter from Mrs. Julia N. Barratt requesting reconsideration of our Claims Division's denial of waiver of her debt to the United States in the amount of \$1,260. The debt arose from erroneous payments made to her by the Navy of an annuity under the Survivor Benefit Plan, 10 U.S.C. 1447-1455, during the period September 1976 through February 1977.

The denial of waiver was based in part on the fact that in her original request for waiver she indicated that she suspected the existence of the overpayments. In view of the large amount of the overpayments (which amounted to \$210 per month for the 6-month period) it was concluded that she should have been aware that she was being overpaid and should have pursued the matter further to determine the reason for the excess payments.

In Mrs. Barratt's letter requesting reconsideration she states unequivocally that she knew she was being overpaid. However, she states she made repeated telephone calls to the Finance Center to get the matter corrected and that it was through her efforts that the error was corrected.

Although it is commendable that Mrs. Barratt advised the Navy that she was being overpaid this did not relieve her of the obligation to retain the overpayments for refund to the Government. One who knowingly receives excess payments from the Government cannot expect to retain them. In these circumstances we cannot find that recovery of the

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Overpayments would be contrary to the purposes of the Survivor Benefit Plan or against equity and good conscience. Thus we cannot concur in waiver under the provisions of 10 U.S.C. 1453.

Accordingly, the action taken by our Claims Division in Mrs. Barratt's case is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States