

DECISION



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

*Mr. Kramer
PLMTI*

[Request for Reconsideration of Waiver Denial] 15254

FILE: B-198169

DATE: October 22, 1980

MATTER OF: Chief Warrant Officer Gordon D. Grampp, USN

DIGEST: Navy warrant officer's debt resulting from an erroneous payment of separate rations may not be waived since considering his status and years of service at the time of the payments he should have known that he was not entitled to receive separate rations. Therefore when he received his leave and earnings statements which indicated that he was being paid separate rations he had a duty and obligation to return the payments or set them aside for refund until such time as the accounting error was corrected.

Chief Warrant Officer Gordon D. Grampp, United States Navy, requests reconsideration of our Claims Division's denial of his application for waiver of the claim of the United States against him in the amount of \$808.14 resulting from erroneous payments of separate rations made to him while he was concurrently receiving a basic allowance for subsistence as an officer. For the following reasons the claim against Mr. Grampp may not be waived and the action taken by our Claims Division is sustained.

In January 1976, Mr. Grampp returned to Charleston, South Carolina, after an 8-month deployment in Greece. In April 1976, he was deployed to the Island of Guam. In June 1976, he returned to Charleston but was deployed again in September 1976 to Scotland until April of 1977.

In November 1976, Mr. Grampp was informed that he was suspected of being overpaid for the period January 16, 1976, through November 30, 1976. This was later confirmed in February 1977. The overpayments were the result of his concurrently receiving payments for separate rations and basic allowance for subsistence as an officer. Since Mr. Grampp has permanent officer status he is only entitled to receive basic allowance for subsistence based on a monthly rate and not separate rations which are paid on a daily basis to enlisted members. 37 U.S.C. § 402(b) and (c) (1976).

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Mr. Grampp, in his request for waiver, contends that each of the previously mentioned deployments and returns resulted in pay adjustments to his salary. Thus, he states that it was not unusual or uncommon for his pay to fluctuate every time he received a paycheck. Also, he argues that during 1976 he did not regularly receive his leave and earnings statements (LES). In this regard, he states that nowhere on the LES he received does it explain that separate rations are only paid to enlisted members.

The report from the Navy Finance Center states that there is no indication of fraud, misrepresentation, or lack of good faith on the part of Mr. Grampp. In their opinion, however, he was at least partially at fault since the dual credit was reflected on his LES and he should have brought this matter to the attention of disbursing personnel for investigation.

Subsection 2774(a) of title 10, United States Code (1976), provides that the Comptroller General may waive in whole or in part a claim of the United States against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, if its collection would be against equity and good conscience and not in the best interest of the United States. Subsection 2774(b) further provides that the claim may not be waived 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.

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 B-196261, November 14, 1979, and cases cited therein.

In the present situation, while Mr. Grampp did not regularly receive his LES (he did in fact receive 7),

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the ones he did receive indicated that he was concurrently receiving payment for separate rations and a basic allowance for subsistence as an officer. In this regard, we have held that a person is at least partially at fault for his failure to examine LES's furnished him which, had they been examined, would have alerted the recipient to the fact that erroneous payments were being made. B-197513, September 24, 1980. Moreover, considering his permanent officer status and the length of his service at the time of the erroneous payments (24 years) Mr. Grampp should have known that he was not entitled to receive separate rations but that he was only entitled to receive a basic allowance for subsistence as an officer.)

Therefore, Mr. Grampp, upon receipt of his LES's, should have known that he was receiving payment for separate rations to which he was not entitled. Such knowledge carried with it a duty and obligation to return the excess sums or set aside these amounts for refunds until such time as the accounting error was corrected. See: B-197513, supra. Since he did not do so it is our view that he is not free from fault and collection action is not against equity and good conscience nor contrary to the best interests of the United States.

Moreover, 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-194171, September 13, 1979, and cases cited therein.

Accordingly, the action taken by our Claims Division denying waiver is sustained.)

Milton J. Fowler
For The Comptroller General
of the United States

Memorandum

October 22, 1980

TO : Associate Director, FGMSD - Claims Group (Room 5858)

FROM : *Milton J. Aorlaw*
Comptroller General
For TheSUBJECT: Gordon D. Grampp, USN, request for waiver reconsideration -
Z-2771353-121 - B-198169-O.M.

Returned is file Z-2771353-121 and our decision of today, Chief Warrant Officer Gordon D. Grampp, B-198169, sustaining the action of the Claims Division.

Attachments -- 2



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

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October 22, 1980

The Honorable Richard Kelly
House of Representatives

Dear Mr. Kelly:

We refer to your letter of January 15, 1980, to the United States Navy in which you expressed an interest in the claim of the United States against Chief Warrant Officer Gordon D. Grampp. As you were advised by the Navy, Warrant Officer Grampp's request for waiver of this claim was forwarded to our Office for resolution. Warrant Officer Grampp requests that his debt to the United States resulting from an erroneous payment of separate rations be waived under 10 U.S.C. 2774 (1976).

Enclosed is our decision of today in which we have denied Warrant Officer Grampp's request. Our decision is based on the view that considering his permanent officer status and years of service at the time of the payments Warrant Officer Grampp should have known that he was not entitled to receive separate rations. Therefore, when he received his leave and earnings statements which indicated that he was receiving these payments he had a duty and obligation to return the payments or set aside the amount of the payments for refund until such time as the accounting error was corrected.

We regret that a determination more favorable to your constituent is not possible under the circumstances.

Sincerely yours,

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

For The Comptroller General
of the United States

Enclosure