

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

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FILE: B-212477**DATE:** September 19, 1980**MATTER OF:** Bobby James McGee

DIGEST: Former member seeks waiver of a debt which arose as a result of "with-dependents" basic allowance for quarters which he received on account of his mother, who did not qualify as his dependent. Since he was timely informed of her ineligibility as his dependent for the purpose of his entitlement to the allowance, he was on notice of the overpayment and, therefore, is not without fault in the matter. Waiver of his debt is denied.

This action is taken in response to the appeal of Mr. Bobby James McGee of our Claims Group's August 21, 1979 denial of waiver of the Government's claim against him. Upon review of this case we find that waiver of the Government's claim is not warranted.

Mr. McGee, a former Navy member, initially sought waiver of the Government's claim which arose from erroneous payments he received in the amount of \$3,223. Of that amount, \$98.65 could not be identified by the Navy. This Office concluded that since that portion of the overpayment could not be characterized, Mr. McGee would not reasonably have known he was being overpaid. Therefore, that part of his debt was waived.

The balance of Mr. McGee's indebtedness, \$3,124.35, was paid to him between March 13, 1974, and July 15, 1976, as basic allowance for quarters at the "with-dependent" rate on account of his mother, whom he had claimed as his dependent. A basic allowance for quarters at the with-dependents rate was credited to his pay account, effective March 13, 1974, although the Navy Family Allowance Activity had not made the requisite dependency determination. On May 23, 1974, that activity determined that he was ineligible for the allowance at the with-dependents rate because his mother did not qualify as his dependent. Mr. McGee and the disbursing

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officer were notified of the disapproval action in May 1974. However, no action was taken to correct the error in his pay account, so he continued to receive the allowance in monthly amounts ranging from \$105 to \$116 until July 15, 1976, when the Navy discovered the overpayments during a routine verification of his Leave and Earnings Statement (which did not show he was receiving the quarters allowance), with his pay record (which did show he was receiving the allowance). During this period Mr. McGee was not entitled to basic allowance for quarters even at the lower "without-dependents" rate apparently because he was assigned Government quarters.

Waiver of his \$3,124.35 debt was denied on the basis that he should have known that his eligibility for the payment was dependent upon a determination of support for his mother and he should have inquired concerning the payments made to him before the eligibility determination was made.

In his appeal of the waiver denial, Mr. McGee states that he acted in good faith in relying on the Navy disbursing offices for accuracy in determining his pay entitlement. He further states that because his overpayment resulted from an administrative error, he believes collection of his debt is against equity and good conscience and not in the best interests of the Government.

Under 10 U.S.C. § 2774, the waiver of debts arising out of erroneous payments to service members is precluded 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 * * *."
10 U.S.C. § 2774 (b)(1).

Under our decisions, "fault" as used in this statute exists if it is determined that under the circumstances of the case the member should have known that an error existed and taken action to have it corrected. The standard we apply in making this determination is whether a reasonable person should have been aware that

he was receiving payments in excess of his proper entitlement. Matter of Pace, B-208454, October 4, 1982.

The record shows that within 2 months after the improper payments began, Mr. McGee was notified that his mother did not qualify as his dependent for the purpose of payment of "with-dependents" basic allowance for quarters. Presumably he was aware his pay increased in March 1974 when the payments began, and when his pay was not reduced after he was notified that his mother did not qualify as his dependent, he should have known that he was receiving payments to which he was not entitled. He then should have brought the matter to the attention of responsible Navy disbursing office personnel, but he did not do so.

Even though Mr. McGee may have initially accepted the erroneous payments in good faith when they began in March 1974, because he was given timely notice of the ineligibility of his claimed dependent in May 1974, he must be considered at least partially at fault in accepting the improper payments from the beginning since he continued to accept them without question. See Matter of Frome, B-199808, March 23, 1981. Moreover, the fact that the overpayments resulted from administrative error does not absolve him of his responsibility in the matter. It is a fundamental principle that persons who receive money erroneously paid by a Government agency or official acquire no right to the money but are bound in equity and good conscience to make restitution. Matter of Phoebus, B-197275, March 21, 1980; Matter of Scott, B-188595, June 3, 1977.

Accordingly, the action of the Claims Group denying waiver is sustained.

Milton J. Aorolan
for Comptroller General
of the United States