

**DECISION**

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

**FILE:** B-214770

**DATE:** May 14, 1984

**MATTER OF:** Ronald W. Dvorak

**DIGEST:**

A Navy member received erroneous payments of a Basic Allowance for Quarters due to administrative error during a period when he was occupying Government family quarters. His Leave and Earnings Statements during the period clearly showed he was receiving Basic Allowance for Quarters. Although he initially questioned the accuracy of his pay, he did not advise finance personnel that he was receiving the quarters allowance while living in Government quarters until 7 months after the erroneous payments began. Therefore, he was partially at fault in the matter in failing to promptly notify the finance officer that he was occupying Government quarters and not entitled to Basic Allowance for Quarters, thus precluding waiver of the Government's claim against him for refund of the overpayment.

This action is in response to a request for review of our Claims Group's denial of the application for waiver of Mr. Ronald W. Dvorak's debt to the United States in the amount of \$1,505.17. The debt arose from erroneous payments of a basic allowance for quarters that Mr. Dvorak received while a Petty Officer in the United States Navy Reserve on active duty during the period June 6, 1979, through February 15, 1980, when he and his family were residing in Government quarters. In light of the facts presented, and the applicable provisions of law, we sustain our Claims Group's action in this matter.

Background

Under the pay and allowance system applicable to members of the uniformed services either Government living quarters are provided or a quarters allowance is paid. A service member who is provided with Government quarters adequate for himself and his dependents "is not entitled to a basic allowance for quarters." 37 U.S.C. 403(b).

Petty Officer Dvorak was assigned to the Naval and Marine Corps Reserve Center, Pittsburgh, Pennsylvania, from June 14, 1976, through April 30, 1979. He was assigned family style Government quarters while there. Consequently, he was not entitled to a quarters allowance. Due to his transfer to the Naval and Marine Corps Reserve Center, New Rochelle, New York, on April 30, 1979, his family vacated the Government quarters on April 24, 1979. Upon arrival at his new duty station on June 6, 1979, he was again assigned family style Government quarters. As a result, he was entitled to a quarters allowance only from April 25 through June 5, 1979 (the period of travel when he was not in Government quarters).

Prior to his departure from Pittsburgh, Petty Officer Dvorak's normal semimonthly pay was approximately \$330, and he received his last normal pay prior to his transfer on April 30, 1979. While in a transit status, he received \$278 on May 17, 1979. During June he received payments of \$698 and \$597 which represented all pay remaining due for May and June including his quarters allowance for the period April 25 through June 5, 1979. His normal pay returned to \$330 and \$333 which he received on July 15 and July 31, 1979, respectively.

Petty Officer Dvorak's pay for August 15, August 30, and September 15 increased to \$428, \$432, and \$432 respectively. It is noted that there were no entitlement increases which would warrant an increase of nearly \$200 monthly (\$100 per semimonthly pay period). The disbursing officer was not aware that Petty Officer Dvorak had been assigned to Government quarters and included quarters allowance at the monthly rate of \$195.90 in Petty Officer Dvorak's payments. Further, on September 30, 1979, a payment in the amount of \$786 was made to him. This payment represented not only the semimonthly erroneous normal pay that he was receiving, but because the disbursing officer was unaware of his assignment to Government quarters, payment was included for a retroactive quarters allowance for the period June 5 through July 31, 1979. Then as a result of the general military pay raise effective October 1, 1979, Petty Officer Dvorak's payments increased to \$458 and \$457 in October.

Petty Officer Dvorak's normal pay at his old duty station, while in Government quarters, was approximately

\$330, he was once again assigned Government quarters at his new duty station, and there were no other entitlement changes which would warrant an increase in pay of approximately 30 percent. Thus, there was no reason for him to have anticipated an increase in his normal pay of this magnitude. Annotations on the disbursing officer's copy of Petty Officer Dvorak's Leave and Earnings Statements indicate that subsequent to the February 15, 1980 payment, Petty Officer Dvorak advised the disbursing officer that he was not entitled to a quarters allowance. The disbursing officer noted that there was a resulting indebtedness and reduced subsequent payments to approximately \$336 from February 29, except for the last payment on May 30, 1980, which apparently also included pay through June 13, 1980, when he was discharged.

During the period erroneous payments were being made, Mr. Dvorak was receiving monthly Leave and Earnings Statements clearly showing that he was being paid basic allowance for quarters. At that time he was a petty officer with over 9 years of service.

When Petty Officer Dvorak advised the disbursing officer in February 1980 that he was occupying Government quarters, his normal pay was reduced by the amount of the quarters allowance and he was advised that he was indebted to the United States for the erroneous quarters allowance payments he had received. He was also advised when he was discharged that he was indebted to the Government and that he would be contacted subsequent to his discharge about repayment. The record shows that the Navy Finance Center contacted him by letter dated March 12, 1981, less than 9 months following his discharge advising him that an audit of his pay account showed that he was in debt for \$1,505.71 for the erroneous payments and requesting that he make repayment arrangements or request waiver. Thereafter, he applied on March 26, 1981, to the Navy Finance Center for waiver of the debt. His waiver request was denied by letter dated May 3, 1983, and his application was forwarded to the General Accounting Office for review by letter dated July 14, 1983.

Mr. Dvorak contends that as soon as he noticed an unexpected increase in his pay, he contacted the Navy Finance Center and was informed that the money was owed to him for previous underpayments. He states that this

information was confirmed for him by contacts made by a Station Yeoman at his duty station and his commanding officer who were advised that his pay was correct and that he would receive his normal pay the next pay period. Mr. Dvorak further stated that he believed that he was receiving the correct pay for subsequent pay periods and was entitled to the increase. In addition, he indicates in effect that since he received no answer from the Navy regarding his application for waiver during the intervening 2 years (March 1981 to May 1983), he believed the matter was corrected, and it is unfair to collect from him now.

Our Claims Group denied Mr. Dvorak's waiver application on grounds that after occupying Government quarters and receiving no entitlement increases, he had no basis to expect any increases in pay. Further, after receiving Leave and Earnings Statements that reflected payment of quarters allowances, he should have informed the disbursing official that he was receiving quarters allowances while living in Government quarters in his attempts to resolve the matter. Had this been done, the Navy would have discovered and corrected the error earlier, therefore preventing further overpayments.

#### Analysis

Subsection 2774(a) of title 10, United States Code, provides the Comptroller General's authority to waive a claim against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, the collection of which "would be against equity and good conscience and not in the best interest of the United States." Subsection 2774(b) further provides, however, that the Comptroller General may not exercise the authority to waive any claim:

"(1) if, in his opinion, 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 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. Matter of Seacrest, B-201814, September 18, 1981, and 56 Comp. Gen. 943, 951 (1977).

In the present case, Petty Officer Dvorak's net semi-monthly pay increased by approximately \$100, i.e., \$200 each month when he began receiving the erroneous quarters allowance payments in August 1979. This was a large and significant pay increase and it is not apparent how he could have believed it was caused by previous underpayments since he does not contend that his pay record and earlier Leave and Earnings Statements disclose any underpayments. Although he apparently did inquire about the correctness of his pay initially, he did not inform the disbursing officer that he was occupying Government quarters until some time subsequent to receiving his pay on February 15, 1980, and was satisfied with earlier vague assurances that his pay was correct. In our view, a reasonably prudent person of Petty Officer Dvorak's rank and experience should not have been satisfied with such assurances. He should have set aside the excess amounts for eventual refund and insisted on an examination of his records, specifically pointing out that his Leave and Earnings Statements showed he was receiving a quarters allowance while he was living in Government quarters. Had he done so the error would doubtless have been detected more rapidly and he would suffer no financial hardship in making the refund. Since Petty Officer Dvorak did not do so, we consider him partially at fault in the matter, and we are precluded by 10 U.S.C. 2774(b) from granting his application for waiver. Compare Matter of Sharp, B-198170, June 25, 1980; Matter of Miller, B-203213, December 21, 1981, and Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

As to the approximately 2-year delay in processing Mr. Dvorak's initial application for waiver, the Navy advised that was due to a backlog of applications they had at that time which were processed in chronological order according to the date of the applicant's request. We find no basis for the granting of a waiver otherwise precluded by 10 U.S.C. 2774(b) due to the delay by the Navy in making initial determination as to waiver in these circumstances.

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Accordingly, the action by our Claims Group denying waiver is sustained.

*Milton J. Fowler*

Acting Comptroller General  
of the United States