

**DECISION**

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

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**FILE:** B-217914**DATE:** June 11, 1985**MATTER OF:** Lieutenant Colonel Joseph D. McDonald, USAR  
Retired**DIGEST:**

A retired Army officer was receiving compensation from the Veterans Administration since 1957 when, in 1975, he became eligible for retired pay as a Reserve officer. The officer erroneously executed an application for retired pay which resulted in overpayments, since in order to receive the VA compensation a waiver of retired pay must be executed up to the amount of the veteran's compensation. The fact that the officer may have been in poor health at the time he executed the application does not provide a basis for waiving the Government's claim against him for the overpayments, since he must be considered at least partially at fault for not questioning the payments he received for 8 years prior to the date of discovery of the error. Financial hardship caused by collection is not a matter which may be considered in deciding whether to grant a waiver.

Lieutenant Colonel Joseph D. McDonald, USAR, Retired, requests reconsideration of our Claims Group's denial of his request for waiver of his debt to the United States in the amount of \$26,004.62. The debt arose because he received simultaneous payments of retired pay and compensation from the Veterans Administration. For the following reasons we must sustain the Claims Group's denial of his request.

Colonel McDonald has been receiving veterans compensation from May 24, 1957, to present. On August 11, 1975, when he became 60 years old, he became entitled to retired pay under the provisions of 10 U.S.C. 1331-1337. He received both the Veterans Administration compensation and retired pay from that date until November 1983. In order to be entitled to Veterans Administration compensation and retired pay, a member must waive his retired pay in an amount at least equal to the Veterans Administration compensation. See 38 U.S.C. 3105.

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Colonel McDonald apparently did not execute a waiver of his retired pay, as required, until 1983. However, he did indicate on a form executed in connection with his application for retired pay that he was not receiving compensation from the Veterans Administration.

Colonel McDonald urges that erroneous payments be waived under 10 U.S.C. 2774 on the basis that he was in poor health at the time he executed the forms. He also indicates that repayment of the debt would be an extreme financial hardship for him and his family.

Section 2774 of title 10, United States Code, authorizes the Comptroller General to waive claims by the United States against individuals arising out of erroneous payments of pay and allowances made to or on behalf of a member or former member of a uniformed service if in his opinion collection of the claim would be against equity and good conscience and not in the best interests of the United States. The statute provides that the Comptroller General may not exercise this authority if there is any indication of fraud, fault or misrepresentation or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.


We have consistently held that when an individual knows or should have known that payments he is receiving may be erroneous, he has a duty to make inquiries and clearly establish that he is entitled to the payments. When this is not done, we attribute fault to the individual which precludes waiver of the erroneous payments.

While administrative error on the part of Government personnel may have contributed to the fact that the erroneous payments continued for a protracted period, the inaccurate information provided by Colonel McDonald was the primary reason which caused the erroneous payments to commence. Even though this inaccuracy may be attributable to his poor health at the time, he should have realized that he had provided erroneous information within a reasonable time after he first received retired pay because it is fundamental that a retiree is not entitled to full Veterans Administration compensation and retired pay at the same time. These payments continued for 8 years prior to discovery of the error. In these circumstances we must conclude that Colonel McDonald was at fault in the matter and his request for waiver must be denied.

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Additionally, the fact that financial hardship may occur as a result of collection of the debt is not a matter which may be considered in deciding whether to grant waiver.

Accordingly, we sustain the Claims Group's denial of Colonel McDonald's request for waiver.

*for*   
Comptroller General  
of the United States