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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Commander Clayton H. Spikes, USN (Retired)

File: B-234253

Date: May 4, 1989

DIGEST

A retiring service member who received an unexplained payment from the Navy through administrative error after his retirement should have known that the payment was erroneous and that he would be required to refund it. Since he did not contact the appropriate Navy officials to question the payment, he is not without fault. His fault precludes waiver of the debt under 10 U.S.C. § 2774.

DECISION

Commander Clayton H. Spikes, USN (Retired), requests reconsideration of our Claims Group's denial of his application for waiver of his debt to the United States in the amount of \$797.90. The debt arose from an erroneous payment he received after his retirement from the Navy. For the reasons presented below, we sustain the Claims Group's determination.

Commander Spikes retired from the Navy on October 30, 1986. At that time he received his normal end-of-month pay for October plus a lump-sum leave payment to settle his active-duty pay account. Through administrative error, he received an additional \$797.90 on November 14, 1986. Clerical errors in computing his final active-duty check caused a further overpayment of \$33.95, but the Claims Group waived that amount, since Commander Spikes had no way of knowing that errors had been made with respect to that amount. The Claims Group refused to waive repayment of the \$797.90 on the grounds that Commander Spikes had no reason to expect money from the Navy at that time and should have questioned his receipt of it.

We have authority under 10 U.S.C. § 2774(a) to waive repayment of a claim against a present or former service member arising out of an erroneous payment to the member

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if collection "would be against equity and good conscience and not in the best interest of the United States." However, according to 10 U.S.C. § 2274(b), repayment may not be waived if we find "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. § 2274(b) to include more than a proven overt act or omission by the member. We consider fault to exist if in light of all the facts it is determined that the member should have known that an error had occurred and should have taken steps to correct it. Thus, we use the standard, set forth in 4 C.F.R. § 91.5, that waiver is precluded if a reasonably prudent person would have been aware that he was receiving money in excess of his entitlement and would have brought it to the attention of the proper officials.

The present case is similar to our decision B-202492, Oct. 9, 1981, in which a retiring warrant officer received an erroneous payment 2 weeks after he retired. Although he made some inquiries about the payment, he was found to be partly at fault for not making further attempts to ascertain the source of the payment and was required to repay the money. In the present case, Commander Spikes received an unexpected payment to which he should have known he was not entitled. Since he did not question the appropriateness of the payment, he is at fault under our definition. Therefore, we cannot waive repayment.

Accordingly, we sustain the action of our Claims Group in denying waiver of \$797.90 in this case.

for 
Comptroller General
of the United States