

Matter of: Lieutenant Colonel Christopher N. Maniscalco,
USAF (Retired)--Waiver Request

File: B-253968

Date: December 23, 1993

DIGEST

A member's retired pay was being reduced to meet the pay cap set out in 5 U.S.C. § 5532. He requested waiver when he was overpaid due to errors in the calculation of the deductions. His request is denied because he should have suspected that the calculation was in error.

DECISION

This is in response to an appeal of our Claims Group's denial of waiver of overpayments made to Lieutenant Colonel Christopher N. Maniscalco, USAF (Retired). For the reasons presented below, his waiver request is denied, and the Claims Group's settlement is affirmed.

Col. Maniscalco retired from the Air Force in 1984. He became a civilian employee of the United States government, and therefore his military retired pay was subject to reduction to meet a statutory pay cap. Due to calculation errors, he was overpaid from December 1985 until December 1987. The Claims Group waived the portion of that overpayment which occurred before he was notified of the error.

Col. Maniscalco's current waiver request concerns a further overpayment which occurred between January 3, 1988, and November 30, 1989. This overpayment, which amounts to \$2,368.77, arose because the Air Force failed to take into account a civilian pay increase which went into effect on January 3, 1988. The Claims Group denied waiver of this overpayment.

Col. Maniscalco contends the he has done everything possible to keep the Air Force apprised of pay changes occurring in connection with his civilian position with the government. As a result, he indicates that he should not be penalized for errors made in calculating the reduction in his retired pay.

Under section 5532 of Title 5, United States Code, the retired pay of a retired member of a uniformed service must be reduced if his retired pay together with his civilian compensation exceeds level V of the Executive Schedule.

The waiver statute, 10 U.S.C. § 2774, provides that the Comptroller General may waive collection of certain debts when collection would be against equity and good conscience and not in the best interest of the United States except where there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member. This Office has interpreted "fault" to exist if in the light of all the facts it is determined that the debtor should have known that an error existed and taken action to have it corrected. The standard we employ is whether a reasonable person should have been aware that he was being overpaid. Major Charles H. Barton, Jr., USMC (Retired), B-243388, May 22, 1991.

We agree that Col. Maniscalco was diligent in keeping the Air Force advised of his employment situation. Nevertheless, the fact that he had encountered problems in the past, for which he received a partial waiver of his debt, and the fact that the Air Force did not always adjust his retired pay immediately when a change occurred in his civilian salary, we believe should have put him on notice that something was wrong when he received a pay raise with no corresponding reduction in retired pay. Thus, while it is unfortunate that errors occurred in the computation of his retired pay entitlement, we do not think that this affords a basis for waiver when he should have realized the possibility for error existed.

Accordingly, Col. Maniscalco's waiver request is denied, and the Claims Group's settlement is affirmed.

James F. Hinchman
General Counsel