



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jeffrey S. Hopf—Waiver Request

File: B-260184

Date: July 28, 1995

DIGEST

A former Navy member's request for waiver under 10 U.S.C. § 2774 of a debt to the United States must be denied when he received seven payments of pay and allowances after his separation from the Navy. Since he should have been aware the payments were erroneous and called them to the attention of the proper authorities, he is not without fault, and waiver is therefore precluded.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the request of Jeffrey S. Hopf, former member of the United States Navy, for waiver of the claim of the United States against him for funds he erroneously received after separation from the Navy. We deny waiver, but we adjust the amount owed.

Mr. Hopf separated from the Navy on June 11, 1993, and received a final payment on June 15 of \$598.47. Prior to his separation he had a negative leave balance and therefore at separation was indebted to the United States in the amount of \$386.47. Only \$208.13 was collected from him at separation. This resulted in a debt of \$178.34. After receiving the final payment on June 15, Mr. Hopf received seven additional deposits to his account from the Navy on mid-month and end-of-the-month paydays. The payments were consistent with the active duty pay he had been receiving prior to his separation. They continued until October 1, 1993, and amounted to \$2,789.21. When the Navy informed Mr. Hopf of the overpayments, he responded with evidence that he had been underpaid for periods of time while on active duty when his pay was not increased promptly to reflect promotions. Recalculation showed that Mr. Hopf had been underpaid \$850.78 while on active duty.

Because Mr. Hopf was unaware of the error in calculating his final payment in June 1993, the Claims Group waived the government's claim against him for \$178.34. However, because he should have questioned the seven additional payments, the Claims Group denied waiver of the \$2,789.21 he received after separation. Mr. Hopf

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argues that he thought he was entitled to the additional payments because of the periods of time when he had been underpaid and because he said the Navy owed him money from an account under the Montgomery GI Bill. He also states that repayment will be a hardship.

Under 10 U.S.C. § 2774 the Comptroller General may waive claims for erroneous payments of pay and allowances to members or former members of the uniformed services if collection would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted if there exists any indication of fraud, fault, misrepresentation, or lack of good faith by the member or any other person in accepting the overpayment. The standard we employ in determining whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person should have been aware that he was receiving more than his entitlement. Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, Jan. 17, 1995.

Under the present circumstances Mr. Hopf received a final payment on June 15, 1993. Although he had been underpaid while on active duty, when paychecks continued to be deposited in his account on approximately the same schedule on which he had received them while on active duty and in fairly consistent amounts, Mr. Hopf had a duty to contact the proper authorities to determine the correctness of the payments. The timing and amount of the payments were such as to suggest to a reasonable person that he was still receiving active duty pay and allowances to which he was not entitled. Furthermore, by October 1, 1993, the erroneous payments totaled considerably more than Mr. Hopf said he believed the Navy owed him. Since he did not contact the authorities between July 1 and October 1, 1993, to question the payments, we cannot say that he is without fault, and therefore his debt cannot be waived. See B-257862, supra.

Mr. Hopf states that repayment would cause him financial hardship. However, we have consistently held that financial hardship is not a basis for granting waiver, particularly when, as in this situation, the member is not without fault.

While we deny Mr. Hopf's waiver request, it is our view that the amount of the debt should be adjusted. Mr. Hopf's debt arose from the seven payments which total \$2,789.21. However, the Navy refers to an initial debt amount of \$3,818.23. The higher figure is not supported in the record. The \$850.78 of backpay owed to him

should be subtracted from the substantiated debt amount of \$2,789.21, leaving a balance of \$1,938.43 plus any applicable interest and penalties.

Accordingly, waiver is denied, but the debt should be reduced as noted.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel