



Office of the General Counsel

B-256958

September 20, 1994

Ms.

Dear Ms. :

This is in response to your letter of December 10, 1993, (forwarded to our Office by the Defense Finance and Accounting Service, Denver, on March 23, 1994) appealing the settlement of our Claims Group dated October 19, 1993, which denied your request under 10 U.S.C. § 2774 for waiver of your indebtedness to the United States. The indebtedness was caused by an erroneous payment of pay and allowances incident to your military service. For the reasons which follow, we reverse the action of the Claims Group and waive the debt.

Between January 24, 1991 and February 28, 1991, you received pay and allowances totaling \$1,523.93 while in a standby status as a member of the United States Air Force Reserve for Operation Desert Storm. These payments were erroneous because you were never called to active duty for Operation Desert Storm.

Both DFAS and our Claims Group denied your request for waiver because they found that you were aware of receiving the erroneous payment based on a statement in your waiver application, and such an acknowledgement of receipt of an erroneous payment generally precludes waiver. Your waiver application, dated February 16, 1993, reads:

"I was put on standby via telephone computer and approximately 2 weeks later was sent a check for the amount being collected for. The check was used to pay and take care of my finances while away at Desert Storm. I was again notified of standby until further notice . . ."

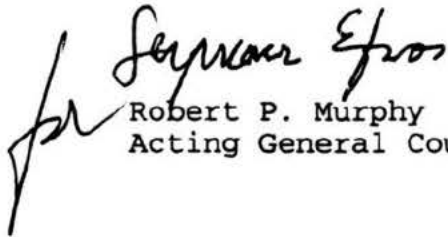
We do not find that this statement shows that you were aware the payment was erroneous at the time you received it as you expected to be placed on active duty.

Moreover, based on your statements regarding your mental condition during this period and the medical records included in your file which substantiate your condition, we conclude that you should not be considered at fault in the matter.

B-217914, June 25, 1986 and  
B-184038, Aug. 20, 1975. Consequently, we find that collection of the overpayment would be against equity and good conscience and not in the best interest of the United States. 10 U.S.C. § 2774.

Accordingly, the claim of the United States against you in the amount of \$1,523.93 is hereby waived.

Sincerely yours,

  
Robert P. Murphy  
Acting General Counsel

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September 20, 1994

**DIGEST**

Evidence from former reserve member regarding mental condition at time of erroneous payment of active duty pay while on standby status for Operation Desert Storm is sufficient that collection of overpayment would be against equity and good conscience and waiver is granted.