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DECISION



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

FILE: B-156482

DATE: February 19, 1986

MATTER OF: Lawrence D. Morderosian

DIGEST:

A former Government employee's request for waiver of his debt to the United States arising out of overpayments of salary is denied, where it appeared that he knew his personnel file contained an erroneous record, and that record caused the overpayments. Under the governing provisions of statutory law, waiver of salary overpayments is not allowed if the employee knew or should have known of the error that caused the overpayments but failed to take corrective action. Consequently, in this case, there is no basis for waiving collection of the overpayments.

Mr. Lawrence D. Morderosian, a former employee of the Federal Government, requests waiver of a claim against him for the recoupment of salary overpayments he received in the course of his employment between 1970 and 1984. The overpayments arose as the result of excessive paid annual leave which was credited to him and used by him. In light of the facts presented, and the applicable provisions of statute, we deny his request for a waiver of the Government's claim.

Background

Mr. Morderosian served on active duty with the armed forces from 1943 to 1946, and from 1951 to 1964. In April 1964 he was retired from military service on the basis of disability. Military medical evaluation boards determined that the disability was the result of injuries he sustained in 1960 in an automobile accident unrelated to his military duties. An official military form prepared at the time as a record of his disability retirement contained these entries:

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" YES NO THE DISABILITY RESULTED FROM INJURY OR DISEASE RECEIVED IN LINE OF DUTY AS A DIRECT RESULT OF ARMED CONFLICT.

" YES NO THE DISABILITY WAS CAUSED BY AN INSTRUMENTALITY OF WAR AND INCURRED IN THE LINE OF DUTY DURING A PERIOD OF WAR."

Between 1970 and 1984 Mr. Morderosian was employed in a civilian capacity by several agencies of the Federal Government. In 1983 the Office of Personnel of the General Services Administration, where he was then employed, undertook a review of the files of all agency employees. In the course of that review it was discovered, through a comparison of records maintained by the Defense Manpower Data Center, that Mr. Morderosian's civil service personnel file contained a falsified version made under forged signature of the official record concerning his disability retirement from military service. In the falsified version, the entries relating to the cause of the disability, set out above, were checked "YES" rather than "NO", to show that his disability was received as a direct result of armed conflict during a period of war.

Further inquiry by the General Services Administration in 1983 produced information from military files showing that in 1972 Mr. Morderosian had personally presented the falsified document to a military finance office. He did this in support of a contention that his military disability retirement had been based on wounds sustained in World War II, and that his military retired pay should not have been reduced under the dual compensation limitations prescribed by 5 U.S.C. § 5532 on account of his civil service employment. Military finance officials then examined the records and discovered at that time that the document was false and contained a forged certification, and they so informed him. Subsequently in 1973, Mr. Morderosian initiated a series of administrative and judicial proceedings in an attempt to change the characterization of his military disability retirement. In those proceedings the original

determination was sustained that his retirement was based on injuries not related to his World War II service.^{1/}

The statutes governing the paid leave entitlements of Federal civil service employees authorize 13 days of paid annual leave per year for employees with less than 3 years of creditable service, 20 days' annual leave for employees with between 3 and 15 years' service, and 26 days' annual leave for employees with 15 or more years' service. Military retirees who obtain civilian employment with the Government generally may not include their prior peacetime military duty as creditable service for civilian annual leave accrual purposes unless their retirement is based on disability resulting from injury or disease received as a result of armed conflict, or on disability caused by an instrumentality of war in a period of war. 5 U.S.C. § 6303(a).

On the basis of the forged document in his civil service personnel file, Mr. Morderosian improperly received credit for all of his military service for annual leave accrual purposes while he was employed in a civilian capacity by the Government. After the General Services Administration discovered this discrepancy in 1983, agency officials corrected the records and reconstructed his leave account. The result showed that he had received salary for periods of annual leave to which he had not been entitled. The agency then asserted a claim against him for the recovery of these salary overpayments.

Mr. Morderosian, through his attorneys, has requested that this claim be waived. In a statement made in support of the request he asserts that he did not make the false document. He also states that although he had known since 1972 that the document did not accurately reflect the official record, he had no idea that this would affect his civil service leave entitlements.

Analysis and Conclusion

Section 5584 of title 5, United States Code, authorizes the Comptroller General to waive the claim of the United States against an employee or former employee of the Federal

^{1/} See Morderosian v. United States, 228 Ct. Cl. 826 (1981).

Government arising out of an erroneous payment of pay or allowances if collection "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a). That section further provides, however, that the Comptroller General may not waive a claim if there exists, in connection with the claim, an indication of "fault" on the part of the concerned employee. 5 U.S.C. § 5584(b)(1).

We define the term "fault," as used in 5 U.S.C. § 5584, as including something more than a proven overt act or omission. "Fault" is considered to exist if in light of all the facts it is determined that the employee knew or should have known that an error existed and should have taken action to have it corrected. Thus, if the employee is furnished with information which would cause a reasonably prudent person to be aware of or suspect the existence of error, but the employee fails to take corrective action, the employee is not without fault and waiver will be denied.^{2/}

In the present case, Mr. Morderosian disclaims responsibility for the creation of the forged document that caused him to be overpaid. Also, there is no indication in the record before us that any criminal charge or administrative disciplinary action was initiated against him based on an allegation that he committed the forgery. Nevertheless, even if we view these circumstances in the light most favorable to him, this does not lead to a conclusion that he was without fault in the matter. The undisputed fact remains that in 1972 military authorities affirmatively informed him that the document in his possession relating to his disability retirement was materially in error. Our view is that a reasonably prudent Government employee in such circumstances would then have advised his employing agency about the matter, so that the records relating to his past military service in his civil service personnel file could be corrected. Had Mr. Morderosian taken this action, the error which caused the salary overpayments at issue would doubtless have been corrected immediately. Hence, we conclude that he was at fault in the matter for failing to take appropriate corrective action.

^{2/} See 4 C.F.R. Part 91; National Treasury Employees Union, 58 Comp. Gen. 721, 723 (1979); and Lamoyne J. DeLille, 56 Comp. Gen. 824, 828-829 (1977). Compare also Price v. United States, 224 Ct. Cl. 58 (1980).