

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: **B-182776**DATE: **JUN 11 1975**50775
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MATTER OF: Reconsideration of decision denying waiver of claim of the United States under 10 U.S.C. 2774 - Lieutenant Colonel Joseph J. Silagy

DIGEST: Decision denying waiver of the claim of the United States against a member of the uniformed services who received housing and cost-of-living allowances in the amount of \$273 per month after return to United States must be sustained since the amount involved was substantial and member should have realized he was being overpaid notwithstanding fact that fluctuations occurred in his entitlements.

This action is in response to a letter dated February 6, 1975, from Lieutenant Colonel Joseph J. Silagy, USAF, Retired, which in effect requests reconsideration of our decision B-182776, January 17, 1975, which denied his request for waiver of the claim of the United States against him.

Colonel Silagy's indebtedness arose as a result of payments of housing and cost-of-living allowances for the period July 2, 1969, through January 31, 1972. These allowances are payable to members of the uniformed services who are stationed outside the continental United States or in Hawaii or Alaska. Prior to July 2, 1969, the member had been serving outside the United States and was entitled to and receiving these allowances. Upon his return to the United States on July 2, 1969, entitlement to these allowances ceased, however, the payments continued and were not terminated until January 31, 1972. Presumably, the continuation of the payments following the member's return to the United States was a result of administrative error. The overpayments as computed by the Air Force totalled \$8,453.90.

The member requested waiver of the indebtedness under the provisions of 10 U.S.C. 2774. The Air Force in reporting on the matter recommended to our Transportation and Claims Division that the member's request for waiver be denied since the member should have known that he was not entitled to these allowances and had been in receipt of monthly leave and earnings statements which indicated that improper payments were being made. The Transportation and Claims Division of this Office agreed with this view,

B-182776

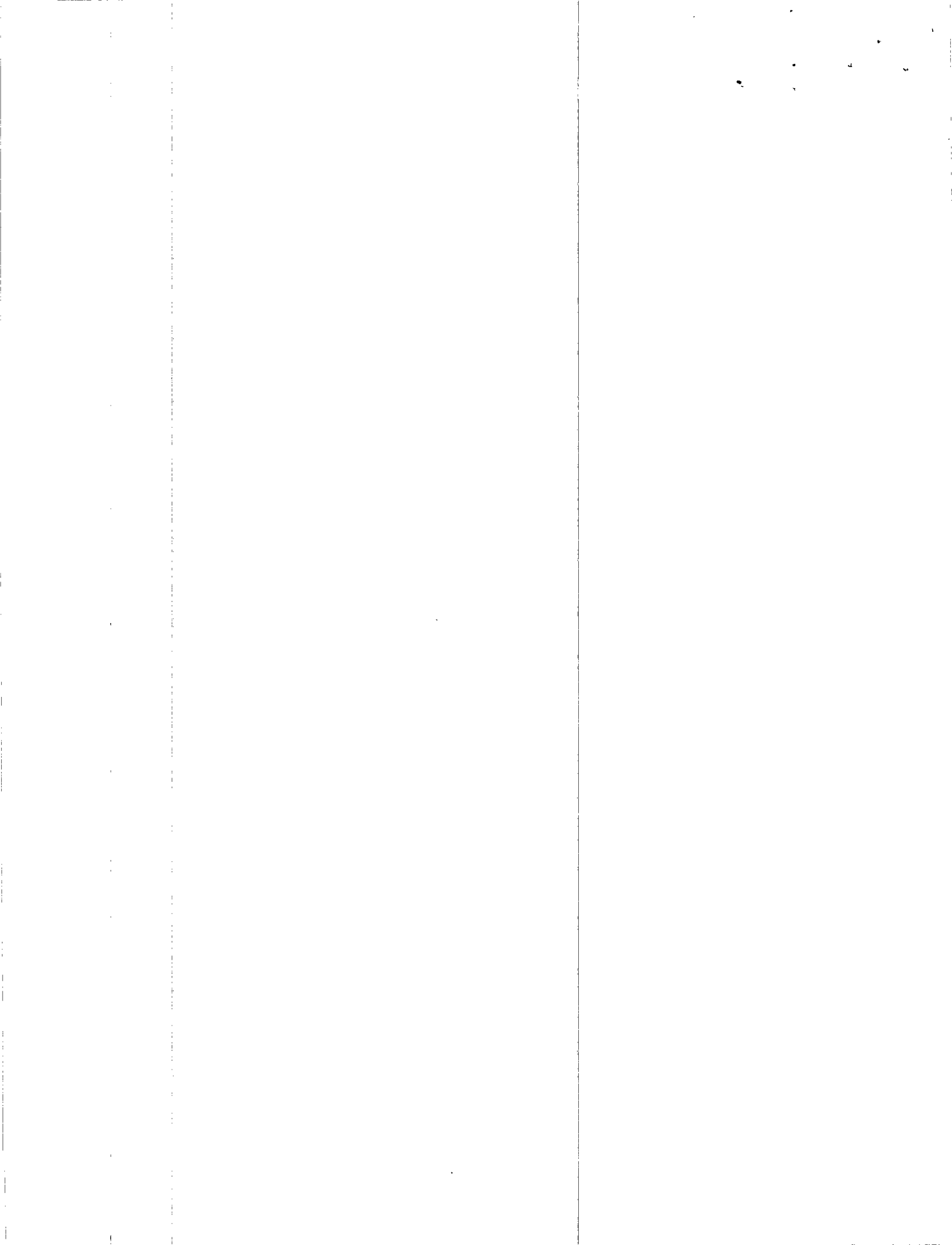
noting that the officer should have expected a decrease in his entitlements upon his return from overseas and his request for waiver was denied.

The officer requested a review of this action on the basis that he did not refer to his leave and earnings statements but relied solely on notification of amounts deposited in his bank. He also pointed out at the time he returned to the United States a pay raise went into effect which increased his basic pay entitlement and, as a result, any disparity in his pay was not noted. He also stated that he was responsible for bringing the erroneous payments to the attention of the finance officers.

In responding to the officer's request for review, we noted in the decision of January 17, 1975, that the Standards for Waiver promulgated pursuant to 10 U.S.C. 2774 provide in 4 CFR 91.5(c), that any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to timely bring the matter to the attention of appropriate officials.

Also, in our decision of January 17, 1975, we indicated that leave and earnings statements are issued periodically to members of the uniformed services for the purpose of informing them of exactly what entitlements and deductions go into arriving at their net pay. We pointed out that the officer was receiving \$273 per month in allowances to which he was not entitled and that the pay raise which went into effect at the time of his return to the United States was \$132 in his case. On this basis we concluded that the officer should still have expected a substantial decrease in his net pay and denied waiver.

Colonel Silagy in requesting reconsideration of the decision of January 17, 1975, points out that the reason the error was not detected by him at the time of his return from overseas was due to extenuating circumstances existing at that time. Among the reasons he sets forth are the fact that a pay raise went into effect and his pay records were reviewed by responsible financial personnel. He also indicates that the deposits which were made in his bank account at this time, representing dislocation allowance,



dependent travel and withdrawal of amounts in soldiers and sailors savings plan, further served to reduce the possibility of readily detecting the excess payment.

Further in response to the statement in the decision of January 17, 1975, that he should have noticed a decrease in his monthly entitlements even though a pay raise went into effect, the officer indicates an overall decrease in monthly entitlements as a result of his loss of maintenance and representational payments did occur on his return to the United States.

Colonel Silagy also indicates that he was not receiving leave and earnings statements at the time he returned to the United States, but only began receiving them at a later date. He states that when he did begin receiving leave and earnings statements he did not review them since they arrived much later than his bank statements and he always had a maximum leave carryover. He indicated no problems had arisen in the 20 years he had followed the practice of reviewing the notice of bank deposit since the Air Force financial services have always been responsible and accurate.

Colonel Silagy indicates that the Federal Government has never officially accepted any responsibility for the situation and merely explains the overpayments were the result of unexplained reasons. He also indicates that he believes that in enacting the waiver law Congress intended to grant relief in cases such as his where there was an honest and justified mistake. Furthermore, he indicates that he resents the implication in the digest of the decision of January 17, 1975, that his actions were neither reasonable or prudent.

We pointed out in the decision of January 17, 1975, that the Standards for Waiver, 4 CFR 91.1 et seq., regulations issued to implement 10 U.S.C. 2774, provide that generally any significant unexplained increases in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to timely bring the matter to the attention of appropriate officials.

These regulations are general and are designed to provide criteria for making determinations with regard to granting a

B-182776

waiver of the claim of the United States against an individual. The term "reasonable" as used in the regulation and when referred to in decisions of this Office, is used solely as a reference to the regulation and the criteria which is being applied in a case.

Concerning the officer's comments with regard to responsibility for the error, it is clear that the error was the responsibility of the finance officers servicing his pay account and should have been detected and corrected by those officers. However, in many instances an individual is in a better position to detect errors in the pay and allowances to which he is entitled. It is to be observed that one of the purposes for issuing leave and earnings statements is to provide a member with a statement of his entitlements and deductions. We do not view the fact that a member does not choose to refer to the statement as constituting justification for a member not being aware of his entitlements.

While the officer lists reasons why he failed to notice the fact that he was receiving payments to which he was not entitled, as pointed out in our earlier decision, a substantial decrease in his monthly entitlements should have been expected and noticed following his return to the United States. In view of the fact that the amount involved was substantial, \$273 per month, we do not view as unreasonable the standard imposed by the decision of January 17, 1975, that the officer should have been put on notice that he was being overpaid.

Accordingly, the denial of waiver of the claim of the United States in this case is sustained.

R. F. KELLER

~~Acting~~ Comptroller General
of the United States