

**DECISION**



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

776

FILE: B-183460

DATE: MAY 28 1975

MATTER OF: Waiver of indebtedness -  
Sergeant First Class

USA, Retired

DIGEST: Retired service member's debt resulting from erroneous payment of family separation allowance, type I, may not be waived since he knew that continued payment of this allowance after his return from an overseas assignment was improper. The fact that he notified proper officials of the overpayment provides no basis for waiver of subsequent payments since he had a duty to set aside such payments for eventual return to the United States at the time the pay account error was corrected. Further, financial hardship resulting from collection is not a sufficient reason for a member to retain payments that he knew at the time of receipt did not rightfully belong to him, since he had a duty to return such amounts.

This action is in response to a letter dated March 1, 1975, from Sergeant First Class USA, Retired, by which he appeals the action taken by the Transportation and Claims Division of this Office, dated February 4, 1975, which denied waiver of his indebtedness to the United States in the amount of \$1,755.47, arising out of the erroneous payment of family separation allowance, type I (FSA-I), for the period May 8, 1973, through September 30, 1974, incident to his service in the United States Army.

Denial of waiver by our Transportation and Claims Division was predicated on the information then available, it appearing that while there was no indication of fraud or misrepresentation on the part of the member, a person of his experience and length of service should have realized that family separation allowances should have been terminated when he left his overseas station and that he was at least partially at fault for failure to inquire as to the correctness of his pay entitlements thereafter.

Sergeant contends that in June 1973, he informed both his commanding officer and his finance officer at Fort Riley, Kansas, that he was still receiving payment for FSA-I; that after

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he received his Leave and Earnings Statement (DA Form 3486 (TEST)), for the period July 1-31, 1973, which indicated that family separation allowances were to be stopped effective May 8, 1973, he again notified his finance officer that he was still receiving payment for FSA-I and requested that further payment be stopped; that he continued to receive FSA-I each month until his retirement in September 1974; and that all attempts to stop payment of FSA-I were unsuccessful. As a result, he contends that he was not at fault and that the collection of \$1,445.27 against that indebtedness at the time of his retirement on September 30, 1974, caused him and his family great financial hardship.

The record shows that in July 1972, the member was assigned to the 60th Military Police Detachment, APO New York 09034, and was entitled to family separation allowance, types I and II, at \$104.70 and \$30 a month, respectively. He was transferred to Fort Riley, Kansas, in May 1973, reporting there on May 8, thereby terminating his entitlement to both allowances effective that date. However, while payment of FSA-II was properly discontinued, the member continued to be paid FSA-I through September 30, 1974, which payments totaled \$1,735.47. Collection in the amount of \$1,445.27 was made on his final pay voucher (Military Pay Voucher Number 552086, dated October 1, 1974), leaving a balance due the Government of \$305.78.

Section 2774 of title 10, United States Code (Sept. II, 1972), provides in pertinent part as follows:

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances \* \* \* to or on behalf of a member or former member of the uniformed services \* \* \* the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General \* \* \*

\* \* \* \* \*

"(b) The Comptroller General \* \* \* may not exercise his authority under this section to waive any claim--

"(1) if, in his opinion, there exists, in connection with the claim, an indication of \* \* \* fault, or lack of good faith on the part of the member \* \* \*

The statement by Sergeant [redacted] that he advised the appropriate Army finance officer of the erroneous payments of family separation allowances and the fact that he made efforts to stop the payments, indicates an initial good faith effort on his part. However, the fact is that he knew at the time he received his pay for each pay period that he was not entitled to the monies allocated for any family separation allowances. Such knowledge on his part carried with it the duty and legal obligation to return the excess sums or to set aside this amount for refund at such time as the accounting error was corrected.

Since the member knowingly received these payments and failed at least to set them aside for eventual refund at such time as the error was corrected, he did not accept such payments in good faith and collection action is not against equity and good conscience nor contrary to the best interests of the United States.

Accordingly, the action taken by our Transportation and Claims Division is sustained.

R.F. KELLER

Deputy Comptroller General  
of the United States