

DECISION



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

FILE: B-187490

DATE: NOV 3 1976

MATTER OF: Commander

DIGEST: Service member serving overseas as member without dependents who is assigned Government quarters which he occupies for approximately 8 months and then leases civilian quarters while still retaining quarters is not entitled to station housing allowances during such period in accordance with para. M4301-3b(1) and (3), 1 JTR (changes 224 and 229). Since at time he requested such allowances he certified that he was not occupying Government quarters, which fact he should have known was erroneous, it cannot be held that he was without fault in matter so as to waive erroneous payment of housing allowances.

This action is in response to a letter on behalf of Commander _____ USN, _____, constituting an appeal of the action taken by the Claims Division of this Office dated July 19, 1976, which denied his request for waiver of the claim of the United States against him in the gross amount of \$5,748.95 arising from erroneous payments of housing and cost-of-living allowances incident to his service in the United States Navy.

The files available to this Office show that the member reported to Hawaii on October 21, 1971, as a member without accompanying dependents, and obtained quarters at the Naval Station, Pearl Harbor, Bachelor Officer Quarters (BOQ). On June 26, 1972, the member signed a lease for an apartment in Honolulu which he occupied at least through May 28, 1975. On July 11, 1972, the member executed a certificate for cost-of-living and housing allowances for member only, in which he certified that he was not presently occupying Government quarters. He also certified that he would inform his commanding officer when Government quarters were occupied. This certificate appears directly above the member's signature.

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The member received station allowances for the period June 26, 1972, through April 17, 1975, during which period the BOQ quarters remained assigned to him. As a result of an audit of the Naval Station Commissioned Officers Mess (closed) to determine if any permanent residents, i.e., assigned a room at the BOQ, were receiving station allowances, it was discovered that the member was receiving such allowances while assigned a room at the BOQ. Action was thereupon taken to terminate payment of the station allowances and collect the allowances paid.

The Commandant, Fourteenth Naval District, has indicated that the District Inspector General conducted an investigation into the circumstances of this matter and the information developed in the investigation does not indicate any criminal intent to defraud the Government by the member. However, the Commandant states that the member exercised overall poor judgment in the matter. He also states that the overpayment was not caused by administrative error.

The member has requested waiver of the indebtedness resulting from the erroneous payment of the station allowances on the basis that he did not know he was being overpaid. In doing so he indicates that after moving into his leased apartment he retained the BOQ quarters which he used for "changing of clothes for noon athletics and official social functions by staff officers and occasionally by duty officers when required to remain on board the station."

The station allowances for which the member is indebted are prescribed in Volume 1 of Joint Travel Regulations (1 JTR), pursuant to 37 U.S.C. 405 (1970) concerning entitlement to such allowances, subparagraphs M4301-3b(1) and (3) (change 224, September 1, 1971, and change 229, March 1, 1972), 1 JTR, in effect at the time the member began receiving the erroneous allowances, provided in pertinent part as follows:

"(1) Cost of Living Allowances. Except as otherwise authorized under subpar. (2), a member without dependents will be entitled to cost-of-living allowances as follows:

- "1. for any day during which a Government mess (3 meals a day) is not available to the member at his permanent duty station;

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* * * * *

"(3) Housing Allowances. Housing allowances are payable to a member without dependents for any day upon which Government quarters are not assigned to him at his permanent duty station. * * *"

In this case the member was not entitled to either allowance since Government quarters were assigned to him and a mess was available to him at his duty station.

Section 2774^{1/2} of title 10, United States Code (Supp. II, 1972), provides in pertinent part as follows concerning the waiver of erroneous payments:

"(a) A claim of the United States against a person arising out of an erroneous payment of any 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 fraud, misrepresentation, fault, or lack of good faith on the part of the member * * *"

The word fault, as used in 10 U.S.C. 2774^{1/2}, has been interpreted as including something more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable

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person should have been aware that he was receiving payments in excess of his proper entitlements. See B-184514, September 10, 1975.

In the present situation at the time the member applied for the station allowances--on the application form for such allowance-- he certified that he was not then occupying Government quarters. Inasmuch as he was then occupying Government quarters and had been since his arrival at his permanent station approximately 8 months prior to the time he executed the requested statement, it cannot be said that the member was without fault in this matter. It is to be expected that a member with the rank and years of service such as in this instance would read a document he is executing, especially that statement appearing immediately above his signature. In addition it is our view that a member of his grade and experience should be aware that under circumstances such as these he is not entitled to retain assigned Government quarters and also receive station housing allowances.

In view of the circumstances we must conclude that the member was at least partially at fault in this matter and that there is no proper basis upon which this Office may waive the Government's claim against him.

Accordingly, the action of the Claims Division in this case is sustained.

R. F. Keller
Comptroller General
of the United States

DEBT COLLECTIONS

Waiver

Military personnel

Effect of member's fault

DEBT COLLECTIONS

Waiver

Military personnel

Housing and cost - of - living allowances

QUARTERS ALLOWANCE

Government quarters

Payment of allowance and occupation of quarters

STATION ALLOWANCES

Military personnel

Housing

Government quarters

Occupation effect on entitlement