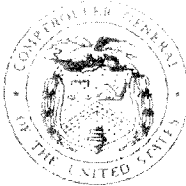


DECISION



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

479

FILE: B-190111

DATE:

MATTER OF: Master Sergeant Roy E. Peterson, USAF
(Retired)

DIGEST: Air Force member's request for waiver of a claim against him arising out of erroneous overpayments of pay and allowances must be denied, in view of the fact that he knew he was being overpaid when the errors occurred, since in such circumstances he became partially responsible for correcting the errors, at least to the extent of setting aside the overpayments for return to the Government. 10 U.S.C. 2774 (Supp. II, 1972).

This action is in response to a letter dated April 6, 1977, to the President of the United States from Master Sergeant Roy E. Peterson, USAF (Retired), [REDACTED]. The letter was forwarded to this Office since it constitutes an appeal from the determination by our Claims Division, which by letter dated March 29, 1977, denied Sergeant Peterson's request for waiver of collection of a debt to the United States. The debt arose out of erroneous overpayments of pay and allowances in the amount of \$708.69, incident to his service in the United States Air Force.

It is indicated that the Air Force made a payroll error in the member's records in the process of preparing for conversion to the Joint Uniform Military Pay System (JUMPS) effective June 1, 1974. This error caused the member to be paid during May 1974 without regard to the proper amounts of allotments he had authorized and deductions for Servicemen's Group Life Insurance and Social Security and income tax withholdings. He should have received mid-month and end-of-month payments of \$152.51 and \$152.50, respectively. However, the payments he received were in the amounts of \$507.94 and \$505.76, resulting in erroneous overpayments in a total amount of \$708.69.

It is further indicated that when the member received the mid-month May 1974 paycheck for \$507.94, he immediately reported the error to finance personnel. He was then apparently advised that it had been necessary to reconstruct his military pay record

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In preparation for the conversion to JUMPS and that incorrect data had been entered in a magnetic record strip which either eliminated or changed the amounts of his authorized deductions. He was apparently also advised that because the end-of-month May 1974 pay computation was run early in preparation for the final increment of the conversion to JUMPS, corrective action could not be taken in time to prevent the issuance of an erroneous end-of-month payment of \$505.76 instead of the normal amount of \$152.50 to which he was entitled. It thus appears that both the member and finance personnel were made aware of the erroneous overpayments at the time they occurred.

It appears that collections of the erroneous payments were begun in June 1974 from the member's regular pay. The member requested that collection of the erroneous overpayments be waived, but our Claims Division denied the request for the reason that if a member knows or reasonably could be expected to know he is being erroneously paid, he has a duty to retain such funds for subsequent refund to the Government upon demand.

In his letter of appeal the member states that he could do nothing about the overpayments, that the matter involved no fraud or deceit on his part, and that his entire military record reflects his complete honesty and integrity. He suggests that under such circumstances his case should receive favorable consideration under the statute authorizing waiver of claims arising from erroneous overpayments, and he states he cannot understand why his request for waiver was denied by the Claims Division.

Subsection 2774(a) of title 10, United States Code (Supp. II, 1972), provides in pertinent part that 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.

In the present case, the member knew that he was being erroneously overpaid when he received the mid-month paycheck for May 1974 in an amount which greatly exceeded his normal entitlements. After discussing the matter with finance personnel he also knew that he would receive an erroneous end-of-month check. He then became partially responsible for correcting the error, at least to the

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extent of notifying the proper authorities and setting aside the overpayments received by him for eventual repayment to the Government. It appears that he did notify the proper accounting officials, and it is indicated he made arrangements to return the overpayments, apparently beginning the next month.

When he later became aware of the waiver statute, he requested that the claim against him arising out of the overpayments be waived. However, since it is clear that he knew he was being overpaid when he received the erroneous overpayments, it is our view that he had a responsibility to correct the error by setting aside and returning the overpayments. We do not question the member's honesty or integrity, and we do not suggest that there may have been any fraud, deceit, fault or lack of good faith on his part. However, we do find that he had a responsibility to correct the error through repayment of the excess amounts he knew he had received by mistake. Hence, it is our view that it is not against equity or good conscience, nor is it against the best interests of the United States, to require that the member make restitution in this case.

Accordingly, the Claims Division's determination denying the member's request for waiver is sustained.

Comptroller General
of the United States