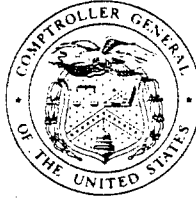


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DECISION



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

FILE: B-194171

DATE: September 13, 1979

MATTER OF: Petty Officer Sidney Walker, Jr.

DIGEST: Considering his rank, years of service, and the amount of the overpayments, a service member who received erroneous payments of basic allowance for quarters while he occupied Government quarters should have known that the payments were erroneous, and that he would be required to refund them. Therefore, he is not without fault in the matter so as to permit waiver of his debt. Further, financial hardship, alone, resulting from collection is not sufficient reason for a member to retain the payments that he should have known did not belong to him.

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[Request

Petty Officer Sidney Walker, Jr., requests reconsideration of our Claims Division's November 17, 1978 denial of his application for waiver of his debt ~~to the United States in the total amount of \$1,389.30.~~ *Resulting from* ~~The debt arose from~~ erroneous payments of basic allowance for quarters] (BAQ) made to him while he was occupying Government quarters.

Petty Officer Walker was assigned Government quarters on March 8, 1974, and the credit of BAQ was properly terminated on his pay record. However, through disbursing error the BAQ credit was reinstated on his pay record opened July 1, 1975. As a result he was erroneously paid BAQ for the period July 1, 1975, through March 15, 1976, in amounts ranging from \$158.40 to \$166.20 per month.

The member, in his original request for waiver, contended that in August 1975, after suspecting he was being overpaid when his pay increased, he took his check to a disbursing clerk for verification, but that his check was returned and he was informed that the amount was correct. In his appeal, he also contends in essence that since the error was administrative, disbursing officials were responsible for correcting it and, that recoupment will result in serious hardship to him and his family.

Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts when collection would be

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against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) precludes waiver if, in the opinion of the Comptroller General—

"* * * there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member * * *"

We interpret the word "fault", as used in 10 U.S.C. 2774, as including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in light of all of the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, considering the amount of the overpayments and his rank and years of service, Petty Officer Walker should have been aware that he was not entitled to live in Government quarters and still receive BAQ. Although he states that he was aware of the possibility of error and he questioned the accuracy of his pay, it appears that he knew or should have known that he was continuing to be overpaid and would eventually be required to repay the erroneous amounts. The correctness of the payments received was so doubtful that he should have, at a minimum, set aside these excessive amounts until a definite determination and statement had been made to him fully explaining his entitlement.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein.

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Financial hardship alone, resulting from collection, is not a sufficient reason to retain the payments he should have known did not belong to him. B-183460, May 28, 1975; B-192380, November 8, 1978. Therefore, since Petty Officer Walker had a duty and legal obligation to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected, we are unable to conclude that he is free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States.

Accordingly, the action of our Claims Division denying waiver is sustained.


Deputy Comptroller General
of the United States