

PLM - II

DECISION



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

612
10, 607

FILE: B-194598

DATE: June 28, 1979

MATTER OF: Petty Officer James E. Fahey, USN, Retired

DIGEST: Retired Navy member's request for waiver of his debt to the United States arising out of erroneous payments of proficiency pay extending over a period of 17 months must be denied even though he brought the error to attention of appropriate officials initially when the administrative error occurred, since he knew he would be required to make restitution. Also, he can not be found without fault in the continuance of the erroneous payments since he was initially aware of them. Granting of waiver is not a matter of right arising from every erroneous payment, and in these circumstances, collection is neither against equity and good conscience nor contrary to the best interest of the United States.

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Petty Officer (HM2) James E. Fahey, USN (Retired), appeals our Claims Division's November 27, 1978 denial of waiver of his debt to the United States arising out of erroneous payments of proficiency pay he received incident to his service in the United States Navy. After review of the matter, we find that waiver may not be granted.

Mr. Fahey's debt in the amount of \$850 arose from erroneous payments of proficiency pay made to him during the period December 1, 1974, through April 30, 1976. The erroneous payments were caused by administrative error in continuing proficiency pay after his permanent change of station from Beaufort, South Carolina, where he had been entitled to such pay. In this regard, in his original request for waiver, dated April 28, 1976, he stated that:

" * * * I stopped collecting this pay [proficiency pay] when I received orders to X-Ray School at Bethesda, MD. One pay day, I received a Leave

Retired Naval Reserve
Erroneous payment
Over payment
Administrative Error
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Earning Statement which stated I was receiving \$50.00 per month Pro-pay which I knew I was not entitled to; this being about 17 months ago.
* * *

The member further states that at that time, he went to the Disbursing Office and was told the matter would be adjusted.

Our Claims Division denied the request for waiver primarily on the basis that the member knew from the beginning of the period involved that he was not entitled to the proficiency pay payments being received during the 17 months involved.

The proficiency payments were continued due to administrative error for a period of 17 months at \$50 per month, for a total of \$850, notwithstanding Mr. Fahey's asserted initial attempt to correct his pay situation. However, he now urges that waiver be granted on the basis that he was not receiving accurate Leave and Earnings Statements, and requests copies of all his paychecks (for the 17 months) and also cites financial hardship in repaying his indebtedness.

Subsection 2774(a) of title 10, United States Code, 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. Subsection (b) provides that the Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority 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 or any other person having an interest in obtaining a waiver of the claim * * *"

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In this case, as shown by his own statement, Mr. Fahey knew he was not entitled to proficiency pay after his transfer from South Carolina, and in fact took action to bring the erroneous payment of proficiency pay to the attention of his disbursing officer in an effort to correct his pay situation. While the action he took initially to bring the erroneous payment error to the attention of the appropriate officials is commendable, it is also the action expected of a reasonably prudent person. However, corrective action was not taken and the payments continued. While Mr. Fahey says his checks did not seem to be over his normal pay, since he had been alerted to the erroneous payments it seems that a reasonable person would expect a reduction in his pay when the error was corrected. In these circumstances we cannot find that Mr. Fahey was without fault in allowing the payments to continue without further checking the accuracy of his pay.

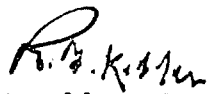
The waiver statute was enacted to provide authority to relieve debtors from their obligations under certain circumstances including when requiring repayment would be against equity and good conscience and not in the best interest of the United States. In this case, the member knew from the outset that errors were being made in his pay account and that he had received payments which he would be required to refund. He acknowledged this in his request for waiver dated April 28, 1976. While certain Leave and Earnings Statements may not have been complete, the erroneous payments were brought to his attention for repayment in April 1976, and were reflected in his pay record.

Also, while it is unfortunate that collection of the debt may cause him some financial difficulties, that is not a sufficient basis to authorize waiver in a case where the member is aware that he has received substantially more money than he is entitled to. Thus, in the circumstances, it is our view that requiring the member to repay the debt is neither against equity and good conscience nor contrary to the best interests of the United States. See B-190565, March 22, 1978.

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Accordingly, the action taken by our Claims Division in denying waiver in this case is sustained.

The Navy should furnish Mr. Fahey the copies of the paychecks he requested since they are not available in our Office.



Acting Comptroller General
of the United States