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PLM II

**DECISION**



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

FILE: B-195890

DATE: February 7, 1980

MATTER OF: Petty Officer Henry J. Hulbert, USN

**DIGEST:** Service member receiving erroneous payments of pay due to overpayment of monthly allotment through administrative error, who failed to question the accuracy of his pay after being alerted by information on his Leave and Earnings Statements (LES's), is not without fault in the matter so as to permit waiver of indebtedness. Further, financial hardship, alone, resulting from collection is not a sufficient reason for a member to avoid payment of allotments made on his behalf that he should have known did not belong to him.

[Request]

Petty Officer Henry J. Hulbert requests reconsideration of our Claims Division's September 2, 1977 denial of his application for waiver of his debt to the United States in the total amount of \$2,520. The debt arose from erroneous payments of a monthly allotment made on his behalf incident to his service in the United States Navy during the period July 1974 through January 1975. The denial of waiver is sustained.

While serving as an airman apprentice in the Navy, Petty Officer Hulbert had a \$60 allotment payable to his mother, Mrs. Sarah Battley, which he reduced to \$40 a month effective July 1974. However, through disbursing error, payments of the allotment were made for \$400 each month from July 1974 through January 1975 while deductions from his pay were made at the \$40 rate, resulting in overpayment and the subsequent indebtedness.

Petty Officer Hulbert, in his original request for waiver, contended that he did not know or suspect that he was being overpaid, that he did not notice any change on his Leave and Earnings Statements (LES's), that his 1974 Statement of Earnings (W-2 Form) does not reflect the overpayments, and that repayment would result in financial hardship. In the appeal, it is also contended that he has made payments on the debt since January 1975 and since

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his remaining debt is now \$824.13, this remaining amount at least should be waived in order to relieve further financial hardship.

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

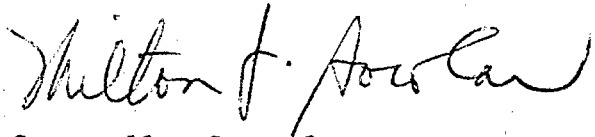
In the present situation, the record discloses that the member and his command received LES's which reflected payment of the \$400 allotment. Mrs. Battley did not bring the large increase in her allotment to the attention of Navy officials and upon discovery of the overpayment failed to answer correspondence regarding it. It appears that both the member and his mother were or should have been aware of the error and resulting overpayments. He should have known that he was continuing to be overpaid and would eventually be required to repay the erroneous amounts. He should have inquired about the payments and set aside the 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.

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See decisions B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein. Also, 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.

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

A handwritten signature in cursive script, appearing to read "Milton F. Aoulan".

For the Comptroller General  
of the United States