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DECISION



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

FILE: B-198956

DATE: October 8, 1980

MATTER OF: Mr. John R. Mechler

DIGEST: Former service member was not entitled to receive flight pay after PCS transfer, but continued receiving it for many months thereafter. Even though the payments were made due to administrative error and he notified the appropriate service officials of the error, waiver of the debt must be denied. Since he knew of the overpayment, he should have known that repayment would eventually be requested and he was responsible to insure that the money was set aside for refund on request. In such circumstances, collection is not against equity and good conscience nor contrary to the best interest of the United States.

This action is in response to a letter from Mr. John R. Mechler, a former member of the United States Air Force, appealing our Claims Division's denial of waiver of his indebtedness to the United States in the amount of \$1,233, which arose from erroneous payments of flight pay during the period June 1976 through January 1978.

Mr. Mechler, while serving on active duty in the Air Force, apparently was in a status which entitled him to receive flight pay. In June 1976, he was transferred overseas on a permanent change-of-station (PCS) assignment to the United Kingdom, at which time he was no longer in a flight pay status. Due to administrative error the orders originally placing him in the flight pay status were not cancelled at the time of his PCS transfer and flight pay continued to be paid to him until ^{for many months} January 1978. *through*

Mr. Mechler asserted in his original application for waiver that he was not aware of his nonentitlement to receive flight pay after his overseas transfer until he had a routine records review several months after his arrival in the United Kingdom on June 22, 1976. He claims that immediately upon receiving that notice, he notified

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all the appropriate financial activities and was advised it would be taken care of. As a result, it is his position that since appropriate administrative officials knew about it and failed to take action for many months thereafter, he should not be responsible for their errors and be required to repay the monies received.

The law governing waiver of claims by the United States arising out of erroneous payments of pay and allowances made to or on behalf of a member of a uniformed service is contained in 10 U.S.C. 2774. That provision authorizes the Comptroller General to waive such a claim if "the collection * * * would be against equity and good conscience and not in the best interest of the United States." That is not the case here.

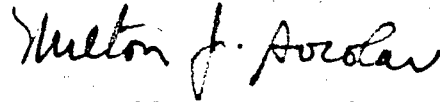
Frequently, erroneous payments arise from mistakes on the part of those who are charged with the administrative responsibility for making payments. Clearly, where a payment is made by the Government in excess of that authorized by law, the Government has the right to recover the excessive payment and the recipient has the responsibility to make restitution since he has acquired no right to the money. In other words, if a benefit is bestowed through mistake, no matter how careless the act of the bestower may have been, the recipient of the benefit must make restitution, the theory being that restitution results in no loss to the recipient. He merely received something for nothing. See for example, United States v. Northwestern Nat. Bank and Trust, 35 F. Supp. 484 (1940). Also, compare Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947), and Posey v. United States, 449 F. 2d 228 (1971).

In the present case Mr. Mechler admits that he knew that he was not entitled to receive flight pay not later than the time of his records review shortly after his PCS transfer. It also appears that he knew he was not in a flight status after that transfer and he should have been aware that his entitlement to continued flight

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pay was doubtful even before the records review. The fact that the action which he took to correct the matter did not promptly result in payment termination does not serve as a basis for waiving the debt caused by the overpayments. Since he knew he was being overpaid, he had the responsibility of insuring that the money would be returnable by setting it aside for subsequent refund on request. Compare B-193375, December 11, 1978.

Accordingly, the action of our Claims Division denying waiver in Mr. Mechler's case is sustained.



For the Comptroller General
of the United States