



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lieutenant Wanda S. Janus - Debt Collection -
Waiver

File: B-233347

Date: December 16, 1988

DIGEST

A service member was paid Basic Allowance for Quarters (BAQ) while assigned to the Officer Indoctrination School in Pensacola, Florida, at the rate of \$373.70 per month for the period September 1, 1985, through November 30, 1985. She was actually entitled to BAQ at the rate of \$238.50 from September 1, 1985, through September 13, 1985, and at the reduced rate of \$7.48 per month after occupying government quarters on September 14. Repayment of the \$380.35 overpayment for September is waived since the member did not receive Leave and Earnings Statements (LES) for that period and could not have known that she was being overpaid. Repayment of \$441.29 cannot be waived, however, even though she did not receive an LES, since a member with a number of years of service should have known that her pay should have decreased substantially upon moving into government quarters. The member, therefore, is partially at fault for the overpayment.

DECISION

Lieutenant Wanda S. Janus appeals our Claims Group's partial denial of her request that an \$821.64 overpayment to her be waived. We agree with our Claims Group's decision waiving repayment of \$380.35 and disapproving waiver of \$441.29.

Following a number of years of service Lieutenant Janus was commissioned as a Limited Duty Officer on September 1, 1985, and was assigned to the Officer Indoctrination School in Pensacola, Florida. She was paid BAQ while stationed there at the rate of \$373.70 per month for the period September 1, 1985, through November 30, 1985. She was actually entitled to BAQ at the rate of \$238.50 from September 1, 1985, through September 13, 1985, and at the partial BAQ rate of \$7.48 per month after occupying government quarters on September 14. The resulting

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overpayment to her totalled \$821.64. The Navy recommended that repayment of \$380.25 (the amount she was overpaid for the month of September) be waived since she did not receive a Leave and Earnings Statement (LES) and could not have been aware that she was being overpaid. However, they recommended that waiver of the remainder be denied, claiming that she had past experience with pay reduction upon assignment to government quarters and, therefore, she should have expected a loss of pay upon moving into government quarters this time as well.

Lieutenant Janus claims that since she was not receiving LES she was not aware of her entitlements. As a result she requested an audit of her pay account and was assured her pay was correct.

ANALYSIS AND CONCLUSION

Section 2774 of title 10, United States Code (1982), provides 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 including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in the light of all 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 whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. 56 Comp. Gen. 943 (1977). Persons receiving excess payments acquire no right to the money, are bound in equity and good conscience to make restitution, and have a duty to set aside the excess payments in order to make that restitution. Dr. Richard E. Goodwin, B-201818, Aug. 18, 1981.

In this case, we think that a member with Lieutenant Janus' experience should have known that her pay should have decreased substantially upon moving into government quarters. Even though she did not receive LES, the fact that her pay did not decrease should have alerted Lieutenant Janus that her pay was incorrect, even though officials told her that it was correct. The pay audits that were performed

would not have shown that there was a mistake in pay if the officials were unaware that she had moved into government quarters.

We agree with our Claims Group, that Lieutenant Janus may not have known that she was being overpaid in September; however, she should have known that her pay should have decreased after moving into government quarters. Accordingly, we sustain the action of our Claims Group in waiving the claim of the United States against Lieutenant Janus in the amount of \$380.35 and denying waiver in the amount of \$441.29.

for 
Comptroller General
of the United States