



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Danny J. Oldland

File: B-271983

Date: December 3, 1996

DIGEST

A military member received erroneous payments of an overseas housing allowance, basic allowance for quarters, and a cost of living allowance at the with dependent rate after he and his wife had separated and moved into separate quarters off base. Partial waiver was granted under 10 U.S.C. § 2774 (1994) for the period prior to their execution of a formal separation agreement because the member reasonably may not have been aware that he was not entitled to the allowance at the with dependent rate. However, waiver was denied for the remaining period because the separation agreement provided that there would be no spousal support and there was no showing that he actually supported her. On appeal, since the member has not established that he provided support to his wife during the period after executing the separation agreement, the action denying waiver for that part of the debt is sustained.

DECISION

This decision responds to correspondence from Stephen J. Dunn, Esq., who is seeking reconsideration of Settlement Z-2927601, Nov. 8, 1994, on behalf of Mr. Danny J. Oldland. That settlement denied waiver of a part of Mr. Oldland's debt due the United States. We conclude that the settlement was correct and is sustained.

Mr. Danny J. Oldland, while a member of the United States Air Force stationed at the Kadena Air Force Base in Okinawa, Japan, and living on base with his wife, was receiving an overseas housing allowance, basic allowance for quarters, and a cost of living allowance at the with dependent rate on her behalf. On September 17, 1990, they separated. Following that separation, they moved into separate quarters off base and on December 12, 1990, they executed a formal separation agreement. The member continued to receive these allowances at the with dependent rate until August 29, 1991, when it was first learned by appropriate authority that he and his wife had separated. On investigation, it was determined that he was not entitled to these allowances after September 17, 1990, and that he had been overpaid \$9,049.07.

Following Mr. Oldland's request for waiver under 10 U.S.C. § 2774 (1994) and denial of waiver by the Defense Finance and Accounting Service, the matter was submitted here for reconsideration. By Settlement Z-2927601, *supra*, it was concluded that, although he was not entitled to the allowances during the period September 17, 1990, through August 29, 1991, he reasonably may not have been aware that he was not entitled to receive dependent allowances during the period September 17, 1990, to December 11, 1990, prior to the date of his separation agreement. As a result, we waived collection of \$2,383.73 of the debt. We denied waiver for the remaining debt of \$6,665.34 because Mr. Oldland and his wife were formally separated on December 12, 1990,¹ and they executed a separation agreement containing the statement that "[t]he Parties waive any claim to alimony or spousal support from the other." We concluded that, since he was not providing spousal support thereafter, that he could not reasonably have believed he was entitled to continue receiving dependent allowances.

Mr. Oldland argues that he made repeated good faith attempts to ascertain from those whom he presumed were knowledgeable about the allowances he was entitled to receive. He argues further that he did provide support for his wife, in that he made two large payments to her in September 1990. He contends that the reason that the statement regarding no spousal support was inserted into the separation agreement was that the earlier payments were in satisfaction of all future support obligations.

The record in the case does not support his arguments. The date used in the statement submitted to support Mr. Oldland's appeal that he attempted to learn about his allowance entitlements was October 1990. Assuming that to be true, those efforts would merely further support the basis upon which we granted him partial waiver of his debt for the period ending December 11, 1990. However, it does not provide a basis to waive any of his debt for the period beginning December 12, 1990, when he and his wife executed the agreement that he would no longer be required to provide her with support. In that regard, since the payments Mr. Oldland claims he made as support payments antedated the separation agreement by more than two months, the payments, the amount of those payments, and their purpose, should have been made part of that record. They were not.

In contrast to Mr. Oldland's assertions, the record shows that, while Mr. Oldland's wife admits having received \$10,500, she states that the amount represented the division of their joint bank account when they separated in September 1990, and she denied that she received any monetary support from him. She also admits that she received \$26,000 from a certificate of deposit, but when the certificate of deposit was purchased in 1987, it was mostly her money that was used. As a result,

¹Erroneously stated in the settlement as September 12, 1990.

she considered the money hers when she withdrew it, rather than it representing support payments from Mr. Oldland. There is nothing in the record that refutes her assertions.

Therefore, it is our view that Mr. Oldland has not established that he provided his wife with spousal support during the period in question and the action previously taken is sustained.

/s/Seymour Efras
for Robert P. Murphy
General Counsel