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DECISION



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

FILE: B-187954

DATE: April 1, 1977

MATTER OF: Mr. Stuart B. Lange

DIGEST: Former service member, who was erroneously paid readjustment pay had reasonable grounds to doubt propriety of payment because of certain official documents and correspondence in his possession. The fact that he verbally questioned propriety of payment before he spent it is not a sufficient basis for waiver since he not only had the responsibility to secure an official explanation of the discrepancy but also had a duty to set aside the amount of improper payment for refund when error was found and corrected.

This action is in response to a letter dated August 20, 1976 (file reference DMTT), from the Accounting and Finance Division, Headquarters Air Force Accounting and Finance Center, enclosing a letter from Mr. Stuart B. Lange, in which he seeks reconsideration of a March 25, 1976 denial by our Claims Division of his request for waiver of indebtedness in the amount of \$10,503, arising out of an erroneous payment of readjustment pay incident to his separation from the United States Air Force.

The record shows that Mr. Lange, a former captain, USAFR, was involuntarily separated from the Air Force on June 28, 1974. At that time, he had completed 4 years, 10 months and 20 days of continuous active service. However, it is indicated that for the purposes of determining possible entitlement to readjustment pay under 10 U.S.C. 687 (1970), certain additional inactive Reserve time was improperly included in his service computation total. As a result of the inclusion of such service time, he was considered as having more than the minimum required 5 years' continuous active service and paid \$10,503 readjustment pay.

On September 20, 1974, the error was discovered and Mr. Lange was notified of his indebtedness. However, upon consolidating his account, it was also discovered that he was underpaid \$138.35,

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thereby reducing his indebtedness to the United States to \$10,364.55.

In his request for waiver, Mr. Lange contends that he questioned the propriety of the readjustment pay payment to him at the time it was made, having spoken to several personnel and finance officers about the matter. He claims that despite his assertions to them that he did not have sufficient active service time to be entitled to such pay, he was repeatedly assured by them that he was so entitled. As a result, he feels that he took all action necessary to have the matter rectified and having accepted the payment on that basis, he should not be held accountable for the errors committed by the Air Force, especially since he already spent the money.

Under the provisions of 10 U.S.C. 2774, the Comptroller General may waive a claim of the United States if its collection would be against equity and good conscience and not in the best interest of the United States. However, subsection 2774(b)(1) provides that the Comptroller General may not waive such claim 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.

In decision B-187936, January 13, 1977, we expressed the view that the existence of a purely administrative error does not relieve an individual of responsibility to determine the true state of affairs regarding resulting improper payments, where they are or should be readily recognized as such. This responsibility also includes the duty to set aside the amount in question for refund at such time as the error is found and corrected. See B-183460, May 28, 1965.

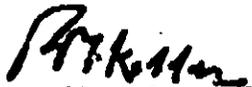
While Mr. Lange has asserted receiving advice from a number of persons that the payment to him was proper, the file contains a copy of a letter addressed to him prior to his separation, advising him personally that he was being involuntarily released on June 28, 1974, and that he was not entitled to readjustment pay. Attached to that letter was an information sheet which included the time requirements for readjustment pay eligibility. In addition, his separation authorization (AF Form 100) showed that he did not have the minimum qualifying active duty time.

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Armed with such written statement and his own admitted knowledge that he had less than the minimum qualifying service time for readjustment pay purposes, the member should have known that, notwithstanding the verbal assurances given him, a basic error was being committed when the \$10,503 payment was made to him. In such circumstances, it is our view that the member should have sought a more definite administrative determination and formal statement explaining his entitlement to such payment before he proceeded on the assumption that it was his and spent it.

In view of the foregoing, we do not agree that the member took all reasonable and appropriate steps to determine the propriety of the payment. As a result, we feel that he was not without fault in the matter. Thus, to require him to repay the amount in question would neither be inequitable nor contrary to the best interests of the United States.

Accordingly, the action taken by our Claims Division is sustained.


Deputy Comptroller General
of the United States