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DECISION

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

FILE: B-193400 DATE: January 31, 1979

MATTER OF: Mr. Ollie N. Marshall

[Claim for Reimbursement of Money Collected Due to Allotment Overpayments]

DIGEST:

1. An Army member stopped a class E allotment for the support of his wife but due to an administrative error the wife continued to receive monthly allotment checks without the required deductions being made from the member's pay. Upon discovery of the error the Army collected the overpayment from the member's pay. The member is not entitled to reimbursement of the amount collected even though the overpayments may not have been due to his fault or negligence since the proceeds from the allotment inured to his benefit as he had a moral and legal obligation to support his wife and children and the allotment served this purpose.

2. Army members' allotments of pay are authorized by 37 U.S.C. 701(d) which also provides that if an allotment is erroneously paid because the required officer failed to report a fact which made it not payable, the amount not recovered from the allottee, shall, if practicable, be collected from the officer who failed to make the report. That provision does not prohibit collection action against the member when his wife receives an erroneous allotment for her and their childrens' support for which the member is legally obligated. The erroneous payment inured also to the member's benefit and, thus, he is in a position similar to that of his wife, the allottee.

This action is in response to a letter dated September 28, 1978, from James H. Green, Esq., attorney for Mr. Ollie N. Marshall, requesting appealing our Claims Division's disallowance of Mr. Marshall's claim for reimbursement of money collected from his military pay on account of erroneous allotment payments made to his wife during the period of October 1970 through February 1972.

The record shows that on June 25, 1970, Mr. Marshall, then a staff sergeant in the United States Army assigned to duty in Vietnam,

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voluntarily executed an allotment authorization, DA form 1341, for a class E allotment in the amount of $613, effective August 1970, payable to his wife, Mrs. Rosene Marshall. The purpose of the allotment was for the support of his wife and children. On September 17, 1970, Mr. Marshall executed a DA Form 1341 to discontinue the allotment. While both the start and stop allotment forms were forwarded to the Army Finance Center from which class E allotments were paid, due to an administrative error in establishing the allotment under the wrong social security number, the allotment erroneously continued to be paid from October 1, 1970, until February 8, 1972, when the error was discovered. During this period of time the required deductions were not made from Mr. Marshall's military pay causing his pay account to be charged with an overpayment in the amount of $10,421. Upon discovery of the error, deductions at the rate of $200 per month were made from Mr. Marshall's pay account until the overpayments were recouped.

Mr. Marshall contends that since he properly executed the stop allotment authorization, was personally contributing to the support of his wife and the error was not caused by his fault or negligence, he should not be held liable for the overpayments. Mr. Marshall also argues that as he was in Vietnam during this time and had very little communication with his wife there was little opportunity for him to personally discover the error.

During the time in question, Mr. Marshall was married to the recipient of the payments and had a moral and legal obligation for the support of his wife and children. We have held in similar cases that if in fact the member had an interest in, or the proceeds from the allotment inured to his benefit, he may be held jointly and severally liable with his wife for the refund of the erroneous payments. B-185820, Feburary 11, 1977; B-174425, December 14, 1971. Therefore, since the allotment was used for the support of his dependents, it appears that Mr. Marshall received a benefit from the erroneous payments and was properly held liable for their refund.

In his appeal Mr. Marshall's attorney argues that our Claims Division's disallowance of the claim on the basis that Mr. Marshall was receiving basic allowance for quarters on behalf of his dependents during the period of the erroneous allotments, received a benefit from the allotments, and was thus jointly and severally liable,

is erroneous. He distinguishes the erroneous allotment payments from the quarters allowance considered in Robey v. United States, 71 Ct. Cl. 561 (1931), cited by the Claims Division. He argues that there is a statutory directive for handling erroneous allotment payments. In making this argument he points to 37 U.S.C. 701(d) which authorizes members of the Army to make allotments of their pay and which provides in pertinent part as follows:

> "* * * If an allotment made under this subsection is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payble, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned, from the officer who failed to make the report." (Emphasis supplied.)

In essence it is contended that Mr. Marshall should be reimbursed and that the United States should begin collection first against Rosene Marshall and then, if not successful, against the finance officer who failed "to make the report" of Mr. Marshall's request for discontinuance of the allotment.

As a general rule the disbursing officer is liable for the erroneous disbursement of appropriated funds, to the extent he is unable to recover them from those to whom or on whose behalf they are paid. 31 U.S.C. 81a-2 (1976) and 49 Comp. Gen. 38 (1969). Under 5 U.S.C. 5514 (1976) a member's debt to the United States resulting from erroneous payments made "to or on behalf" of the member by his agency is specifically authorized to be collected by deduction from his pay, as was done in Mr. Marshall's case. See also 37 U.S.C. 1007(c) (1976).

The effect of the provision in 37 U.S.C. 701(d), to which Mr. Marshall's attorney refers, is to shift the liability of the disbursing officer for erroneous payments, in certain limited instances, to the officer "who failed to report the fact that makes the allotment

not payable." As was indicated previously, in this case there appears to have been no failure to report the fact that Mr. Marshall wished to stop his allotment. That fact was reported by the forwarding of the appropriate DA Form 1341 to the Finance Center. Reportedly, the error occurred because the original allotment had been established under an erroneous social security number. However, even if that had not been the reason for the erroneous payment, it appears that in a case such as this where the member and his wife (the allottee) are determined to be jointly and severally liable on the basis that the erroneous payments inured to the benefit of both, the member is in a similar position to that of the allottee. Thus, it is our view that the cited language of 37 U.S.C. 701(d) would not prevent collection action being taken against the member.

Accordingly, the Claims Division's disallowance of Mr. Marshall's claim for reimbursement of money checked from his pay is sustained.

R. F. Keller

Deputy Comptroller General
of the United States