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DECISION



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

FILE: B-200118

DATE: February 18, 1981

MATTER OF: Lieutenant Lennart Wendel, Jr., USN

DIGEST: Service member's request for waiver of his debt to the United States arising out of overpayments of basic pay must be denied, where it appeared that he knew or suspected he was being overpaid and he relied on general statements by the disbursing office that payment was correct. Under circumstances the member should have requested a detailed explanation of his earnings. Since he did not do so, he is partially at fault, and he may not have his debt waived.

This action is in response to correspondence submitted from Lieutenant Lennart Wendel, Jr., USN, appealing the Claims Division's denial of his [request for waiver of his indebtedness] to the United States in the total amount of \$1,314.57. This indebtedness represents overpayments of basic pay he received during the period April 2 through December 30, 1976. In view of the facts presented and the applicable law and regulations, we sustain the Claims Division's denial of waiver.

The record shows that the member entered into active duty as an ensign on April 2, 1976. At that time he should have been paid at the rate for pay grade O-1 with over 2 years' service with a Pay Entry Base Date (PEBD) of February 5, 1974, with a monthly basic pay of \$693.30. Due to administrative error the disbursing office showed that he had a PEBD of February 5, 1972, and accordingly began paying him at the monthly basic pay rate of \$838.20. The difference in pay rates increased further with the October 1, 1976 pay raise. The erroneous PEBD used by the disbursing office resulted in an overpayment in the total amount of \$1,314.57.

The member states that upon receiving his first paycheck he felt that he was being overpaid and that he contacted the disbursing office and was advised that he was receiving the proper amount. He further states that 1 month later after comparing his paycheck with some of his friends he still felt that he was receiving too much money. He called the disbursing office and was again advised that his pay was correct. He was apparently first advised in February 1977 that he had been overpaid.

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The Navy advised our Claims Division that the member's Leave and Earnings Statements (LES) which he had received show the member's correct PEBD and correct base and norm pay for the period in question rather than the larger amounts of pay which the member actually received.

The Claims Division denied the request for waiver under 10 U.S.C. 2774 (1976) on the basis that the member was partly at fault in the matter stating in part that the member's LES during the period of overpayment did not accurately reflect the amount he actually received, so that he should have suspected that an error had been included. Furthermore, the Claims Division determined that he did not adequately pursue the matter of resolving the status of his pay as he should have requested a written breakdown of his pay.

In his correspondence appealing that determination, the member states that he had no reason to know that his pay was incorrect after he was advised by the disbursing office that he was being properly paid as he had not received an LES until at least 6 months after he entered on active duty in April 1976. The Navy now advises that the member's disbursing office was receiving the member's current LES's but cannot attest as to whether the member was in receipt of his copies of the statements.

Section 2774 of title 10, United States Code (1976), provides our authority to waive a claim against a member of the uniformed services arising out of an erroneous payment of pay or allowances, the collection of which would be against equity and good conscience and not in the best interest 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 * * *."

"Fault," as used in this subsection is considered to exist if it is determined that the member should have known that an error existed but failed to take action to have it corrected.

4 C.F.R. 91.5.

There does not appear to have been any fraud or misrepresentation on the member's part in this case as the erroneous payments were the result of an administrative error. As stated by the member,

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he suspected that he was being overpaid and he called the appropriate disbursing office on two occasions to ask about the correctness of his paychecks.

However, the waiver statute does not apply automatically to relieve the debts of all members, who through no fault of their own, have received erroneous payments from the Government. Waiver action under 10 U.S.C. 2774 is a matter of grace or dispensation and not a matter of right that arises solely by virtue of an erroneous payment being made by the Government. The waiver statute was enacted to provide authority to relieve debtors from their obligation in those circumstances where requiring repayment would be against equity and good conscience.

Notwithstanding the apparent delay in the receipt of his LES's, the member's statements make clear that from the outset he suspected that he was being overpaid. This suspicion was apparently reinforced after he compared his paycheck to those of other members. We believe that the member should not have relied on general verbal statements that his pay was correct. It is reasonable to have expected him to have pursued his inquiry and to have asked the disbursing office for a detailed written explanation of his earnings in order to explain the apparent discrepancy between his anticipated paycheck and his actual paycheck. This is particularly so considering the amount of the overpayment, some \$140 per month.

Considering the facts in this case, it is our view that requiring the member to pay his debt is neither against equity and good conscience nor contrary to the best interests of the United States.

Accordingly, the action taken by our Claims Division denying waiver in this case is sustained.



Acting Comptroller General
of the United States