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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Joseph C. Ward
File: B-250903
Date: March 9, 1993

DIGEST

1. A member of the uniformed services who did not complete his term of enlistment was required to repay the unearned portion of a reenlistment bonus which he had been paid when he reenlisted. At the time he was discharged, part of the debt was offset against amounts due him for active duty pay and allowances and unused accumulated leave. The balance owed, due to recoupment of the unearned portion of the bonus, is not appropriate for waiver consideration, since it was a valid payment when made and therefore is not an erroneous payment for purposes of waiver.
2. Due to administrative error a member was overpaid when he received active duty pay and allowances after he was discharged from the uniformed service. The member, who was told at the time of his discharge that the pay and allowances due him up to the date of discharge were being offset against his debt, should have known he was not entitled to active duty pay and allowances after discharge. Thus he is not without "fault" in the matter and waiver may not be granted.

DECISION

This action is in response to a request from Mr. Joseph C. Ward for reconsideration of our Claims Group's denial of his request for waiver of his debt of \$1,136.33. Mr. Ward was discharged from the Navy prior to completing an enlistment for which he had received a bonus, and was also erroneously paid pay and allowances after separation. It is our view that wavier may not be granted for the reasons set forth below.

Mr. Ward reenlisted for 6 years in the Navy on March 15, 1990. He received a bonus payment of \$3,887.22. However, he was discharged from the Navy on April 11, 1991. Since he did not complete his obligated service, he was required to refund \$3,004.34, a pro rata amount of the bonus. Pay and allowances due Mr. Ward at the time of separation were

offset against the debt of \$3,004.34 at that time, leaving a balance of \$433.28 due the government.

Mr. Ward acknowledges that he was told that the amounts due him at the time of separation consisted of unused leave and pay and allowances for the month of April up to the date of separation. He was also told that amount would be offset against the debt. Mr. Ward was apparently also told that due to the timing of his discharge, it was too late to stop payment of the automatic deposit payment to his bank account of his regular pay and allowances on April 15. His account was credited with \$703.05 on April 15, 1991, increasing the debt to \$1,136.33.

The Navy notified him of his debt and denied his request for waiver of the \$703.05 payment. The Navy also noted that the debt of \$433.28 was statutorily barred from waiver. On appeal, our Claims Group denied waiver of \$703.05 and held that the recoupment debt of \$433.28 could not be considered for waiver because it was not an "erroneous payment" but was proper when made at the time of reenlistment. Linda S. Bailey, B-234426, Feb. 23, 1990. It is our view that the decisions of the Navy and Claims Group were correct, and we affirm those determinations.

Mr. Ward does not challenge the debt of \$433.28 in his request for reconsideration but states that he believed that he was entitled to the pay and allowances automatically deposited to his account on April 15, 1991. However, he also admits that he was told that all amounts owed to him, including the pay and allowances for April and all leave days due him, were being offset against his debt.

Section 2774 of title 10 of the United States Code provides that the Comptroller General or the Secretary concerned may not exercise his authority under this section to waive any claim if in his opinion there exists any indication of fault, fraud, misrepresentation, or lack of good faith on the part of the member. The word "fault" as used in this section has been interpreted by this Office as including more than a proven or overt act or omission by the member. Thus, "fault" is considered to exist if in 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 used is whether a reasonable person should have known he was being overpaid.

In the present case, Mr. Ward was told that he had a debt of \$3,004.34, and that all available amounts due him, including active duty pay and allowances up to and including the date of discharge and pay for unused, accumulated leave days due him, were being used to offset his debt.

It is our view that under these circumstances, a reasonable person would at least question his entitlement to his regular deposit of pay and allowances. Since Mr. Ward did not question the payment and took no action to have the matter corrected, we cannot say he is without "fault" in the matter and waiver of the \$703.05 payment may not be allowed.

Accordingly the determination of the Claims Group is affirmed.

for Seymour E. Hinchman
James F. Hinchman
General Counsel