



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Commander Donald D. White, USN - Waiver Request

File: B-254705

Date: February 15, 1994

DIGEST

Navy member who was entitled to an Overseas Housing Allowance (OHA) received two retroactive OHA payments, one of which was erroneous. The record shows that the member (1) had been given erroneous information regarding retroactive payment of OHA and, on that basis, expected to receive a large sum that was reasonably consistent with the total of the two payments, and (2) was assured upon questioning the statement of indebtedness that followed the payments that the payments were correct and the situation would be remedied. In these circumstances, the member acted in good faith and without fault in accepting the erroneous payment, and the debt therefore may be waived under 10 U.S.C. § 2774.

DECISION

Commander Donald D. White appeals our Claims Group's denial of his request for waiver of a debt of \$1,869.35 that he owes to the Navy. The debt arose due to the erroneous payment of an Overseas Housing Allowance (OHA). We reverse the Claims Group's settlement, and grant waiver.

Commander White was transferred to Stavanger, Norway, in 1988, and as a result was entitled to OHA. He rented private quarters there under a lease dated April 7, 1988. The quarters had been leased by his Navy predecessor in Stavanger, but the rent increased substantially when the lease for occupancy was negotiated shortly before Commander White's arrival. Since the new rent exceeded his predecessor's OHA ceiling for Stavanger, a new ceiling applicable to Commander White's grade needed to be established.

The responsible Navy personnel did not immediately process and send to the Per Diem, Travel and Transportation Allowance Committee the paperwork required to increase the OHA ceiling for Commander White. The Commander, who was unaware of the failure to initiate a ceiling increase, thus

was not entitled to the increased OHA until June 16, 1988, when the Committee finally raised the ceiling.

Commander White did not receive any OHA at all from the time he arrived in Norway until August 1988. His leave and earnings statement (LES) for August, issued by the Defense Finance and Accounting Service (DFAS), shows that he received a total of \$1,366.70 in OHA for that month, plus \$2,252.55 in retroactive OHA. On August 22, 1988, Commander White also received from the Navy's Personnel Support Activity Detachment in Brussels, Belgium, which was the finance office for Commander White's assignment, a retroactive OHA payment of \$3,360.00.

On Commander White's October 1988 LES, DFAS indicated that he was indebted to the government in the amount of \$1,869.35. That debt apparently had been computed after concluding that the Brussels payment was an improper duplicate retroactive OHA payment, and then crediting Commander White further retroactive OHA found due (that is, in addition to the \$2,252.55 received in August) in the amount of \$1,490.51.

Upon receiving the October 1988 LES, and several times thereafter, Commander White questioned the finance office in Brussels concerning the debt, and was assured that the payment he had received from Brussels was correct and that DFAS would remove the debt from his pay account when the paperwork for the OHA was processed.

When the debt was not removed, Commander White asked that it be waived. The Navy replied that the Brussels payment had been an erroneous duplicate payment of OHA for the period from June 16 through August 15. The Navy maintained that Commander White could not reasonably have anticipated two payments of more than \$3,000 issued 1 week apart, and therefore should have taken action to verify them and have the amounts explained. The Navy concluded that because Commander White did not verify the payments' accuracy, he was partially at fault in the matter, which precluded waiver. On appeal from Commander White, our Claims Group agreed with the Navy.

The Comptroller General may waive collection of erroneous payments of pay and allowances under 10 U.S.C. § 2774 if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is precluded if there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the claimant. See Petty Officer First Class Dorlon J. Elliott, USN, B-238764, Apr. 13, 1991.

We think Commander White reasonably expected retroactive OHA in an amount close to the total of both the DFAS and the Brussels payments he received in August. It appears from the record that before his lease took effect in April 1988 Commander White had been led to believe that that he would receive retroactive OHA at a rate higher than his predecessor's for his full tenure in Stavanger. Commander White says that otherwise he would not have moved into his predecessor's quarters, since he knew that the then-current OHA ceiling was considerably less than the new rent, and he instead would have made less costly arrangements. If his expectation about OHA had been accurate, by August the total OHA due Commander White since April 7 would have been only a few hundred dollars less than the total he received in August. In this respect, since the exact amount of OHA due each month varied due to fluctuations in the currency exchange rate, it was difficult for Commander White to calculate the exact amount due him. Further, Commander White's situation was made more difficult by the fact that he was the only military member in Stavanger; his finance office was in Belgium; and his leave and earnings statements arrived late.

Moreover, Commander White indicates that as soon as he received his October 1988 statement he began calling the officer in Belgium who had made the \$3,360 payment. He was repeatedly assured that payment was correct and that the indebtedness would be cleared from his pay account as soon as all the necessary paperwork was processed by DFAS. (At this time, the Brussels office is unable to document the \$3,360 payment, and no one currently stationed there has personal knowledge about Commander White's situation.)

To determine fault for the purposes of waiver under 10 U.S.C. § 2774, we consider whether a reasonable person should have been aware that he was overpaid. Under the present circumstances, we are unable to conclude that Commander White should have been aware of either the Navy's administrative error in failing to process the paperwork needed to raise the OHA ceiling effective April 7, 1988, or the overpayment in issue.

Accordingly, we conclude the Commander White acted properly, in good faith, and without fault. The Claims Group's settlement denying waiver of his debt therefore is reversed.

for *Seymour E. Hoover*
Robert P. Murphy
Acting General Counsel