



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

1054245

# Decision

**Matter of:** Major Alberto S. Leonardo, USMC (Retired)  
**File:** B-255091  
**Date:** May 18, 1994

## DIGEST

Where erroneous payment of Basic Allowance for Quarters was waived because the officer was not at fault, it was improper to offset the amount of the officer's final settlement check for wages and unused leave to reduce the amount subject to waiver.

## DECISION

This is in response to an appeal of a Claims Group settlement waiving the government's claim arising from erroneous payments of Basic Allowance for Quarters (BAQ) to Major Alberto S. Leonardo, USMC (Retired). The waiver was applied to the debt remaining after sums due Major Leonardo were offset against the overall debt.

We modify the settlement.

Major Leonardo was erroneously paid full BAQ instead of partial BAQ during the period October 2, 1989, through September 30, 1992, resulting in an overpayment of \$18,348.65. Upon his separation from the service, his debt was reduced to \$10,642.21 by withholding \$7,706.44 for items of pay due Major Leonardo at that time. Our Claims Group found that there was no evidence that Major Leonardo was aware that he was not entitled to receive full BAQ and that he had acted in good faith in accepting the overpayment. Therefore, the Claims Group waived the balance of the debt, \$10,642.21, under the authority of 10 U.S.C. § 2774.

Major Leonardo objects to the offset. Major Leonardo contends that if he had received his final settlement check (which included his last 2 weeks active duty pay, 60 days leave, and foreign language proficiency pay), the entire \$18,348.65 would have been waived.

Section 2774 authorizes our Office to waive, in whole or in part, a government claim arising out of an erroneous payment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the

United States. The statute permits considering the total erroneous payment for waiver, as opposed to a net amount after offset for cash repayments by the member or setoff for an underpayment that may have resulted from some other administrative error, 55 Comp. Gen. 113 (1975). In this respect, subsection 2774(c) specifically authorizes refund to a member who has repaid all or part of a waived erroneous payment.

On the other hand, in limited situations it would be proper for the government to subtract underpayments in the member's account from overpayments in determining the amount which might be waived. Id. at 117. We have found this to be the case where the individual owed the government an amount with respect to the particular transaction which also resulted in an overpayment subject to waiver. For example, in Simon F. Kula, B-247346, June 24, 1992, we held that relocation expenses due an employee for a change of station move should be offset against an erroneous overpayment of other relocation expenses in connection with the same move. In Maureen S. Fearn, 65 Comp. Gen. 696 (1986), the widow of a deceased military member erroneously received retired pay that should have ceased upon the member's death. We held that survivor annuity payments for the same period, to which she later was found entitled, should be offset by the erroneous payment (which we previously had waived).

In Major Leonardo's case, he in good faith accepted the \$18,348.65 overpayment, and the Claims Group agreed that he was without fault in the matter. The payments withheld at separation were not underpayments caused by administrative error, nor were they in any way related to the event that gave rise to the erroneous payments. Application of the waiver statute is to follow equitable principles. We think it unfair to conclude first that Major Leonardo had no reason to suspect that he had been overpaid, so that the overpayment is waivable, but then to collect more than 40 percent back at separation by withholding pay the member had every reason to believe would be forthcoming. In our view, Major Leonardo was entitled to full payment of the money due him at his separation irrespective of the erroneous overpayment.

The Claims Group should have waived the full amount of the overpayment to Major Leonardo, \$18,348.65. Major Leonardo

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<sup>1</sup>We note that if the overpayment had not been discovered until 1 day after Major Leonardo's separation and attendant receipt of the pay due him at that time, the overpayment would have been waived in full.

therefore should be paid \$7,706.44. representing his final settlement check.

Robert P. Murphy  
Acting General Counsel