



Decision

Matter of: Major Gabriel R. Goold, USMCR (Retired)-
Waiver Request

File: B-256296

Date: June 14, 1994

DIGEST

A retired Marine Corps reserve officer received additional payments of reserve retired pay under two social security numbers. Waiver of the resulting debt under 10 U.S.C. § 2774 is denied because the member was at fault for not pursuing the matter until the extra payments were terminated.

DECISION

This is in response to an appeal of a Claims Group settlement denying the request of Major Gabriel R. Goold, USMCR (Retired), for waiver of the government's claim against him for erroneous payments of reserve retired pay. Major Goold received retired pay from both the valid account and an additional account for approximately 12 years. We affirm the settlement.

Major Goold became eligible for reserve retired pay on February 16, 1981. His retired pay account was established under two social security numbers, and he received additional payments of retired pay until January 31, 1993, resulting in an overpayment of more than \$60,000. He also was issued tax forms each year showing the different social security numbers and the amounts paid from each of the accounts.

Based on a recommendation from the Marine Corps, the Claims Group granted waiver on August 24, 1993. In October 1993, however, the Marine Corps, as a result of further study of the circumstances of the overpayment, asked that the settlement be vacated, and recommended denial of waiver. The Claims Group reconsidered its settlement and on December 10, 1993, denied waiver.

Major Goold, in appealing the Claims Group's latest action, states that when his retired pay accounts were established he submitted a survivor benefit form with his correct social security number and wrote to the Finance Center to point out the error. He also states that he paid income taxes on both

his valid retired pay and the erroneous payments, under both social security numbers.

Under 10 U.S.C. § 2774, the Comptroller General may waive a claim against a member 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. Waiver may not be granted if there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member.

We interpret the word "fault" to include something more than a proven overt act or omission by the member. We thus consider fault 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. Our standard is whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. Dr. Richard E. Goodwin, B-201818, Aug. 18, 1981.

In the present situation, Major Goold was aware from the outset that he was receiving additional payments of reserve retired pay. Although Major Goold states that he made attempts to bring the matter to the attention of the proper authorities, given the clear and continuing error involved Major Goold should have pursued the matter until the additional payments were terminated, and is at fault for not doing so. Since Major Goold is not without fault, waiver cannot be granted. See Petty Officer Christopher C. Robbins, USN, B-194233, Sept. 12, 1979.

The fact that Major Goold paid income taxes on both the valid and the erroneous payments has no effect on our decision. Major Goold should contact the Internal Revenue Service regarding any correction made necessary by his repayment. Dr. Richard E. Goodwin, supra.

The Claims Group's settlement of December 10, 1993, is affirmed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel