



Comptroller General  
of the United States

1112207

Washington, D.C. 20548

## Decision

**Matter of:** Captain Douglas K. Basiger, USAF - Waiver Request

**File:** B-256600

**Date:** July 14, 1994

---

### DIGEST

Air Force member erroneously continued to receive Basic Allowance for Quarters and Variable Housing Allowance while he occupied government quarters during a temporary duty assignment. Since the member should have questioned the accuracy of his pay when it did not decrease during the period he occupied the quarters, his waiver request is denied. The fact that he had purchased a home and had begun making mortgage payments while he lived in government quarters did not create an entitlement to the amounts erroneously paid.

---

### DECISION

This is in response to Air Force Captain Douglas K. Basiger's appeal of a Claims Group settlement denying his request for waiver of a debt that arose when he erroneously was paid Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA) while living in government quarters on temporary duty. We affirm the Claims Group's denial.

Captain Basiger, who had been receiving the allowances, was transferred from Carswell Air Force Base, Texas, to Hurlburt Field, Florida, with temporary duty enroute at Kirtland Air Force Base, New Mexico. Prior to his temporary duty, Captain Basiger was granted permissive temporary duty in Florida to locate a home there, and purchased a home in Florida under a mortgage dated November 27, 1992.

While on temporary duty in New Mexico, Captain Basiger lived in government quarters and therefore was not entitled to BAQ or VHA. From November 2, 1992, to January 13, 1993, however, Captain Basiger was erroneously paid both allowances, causing an overpayment of \$1,268.43. In appealing the Claims Group's denial of his waiver request, Captain Basiger states that he was unaware that he was being overpaid. Captain Basiger also contends that he was

entitled to BAQ and VHA as of November 27, 1992, when he began making mortgage payments on the home he purchased in Florida.

According to 37 U.S.C. § 403(b), a member of the uniformed services is generally not entitled to BAQ while he occupies government quarters without payment of rent. VHA is payable only to certain recipients of BAQ. 37 U.S.C. § 403a.

Under 10 U.S.C. § 2774, a claim against a member arising from an erroneous payment of pay or allowances may be waived if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there exists an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member involved.

We consider "fault" to exist for purposes of 10 U.S.C. § 2774 if in light of all the facts the member should have known or suspected that an error existed and taken proper action to have it corrected. If a member experiences a change in pay that would cause a reasonable person to question the correctness of his pay, waiver is ordinarily precluded if the member fails to bring the matter to the attention of the proper authorities for correction.

When Captain Basiger moved into government quarters, his pay should have decreased because he was not entitled to BAQ while living there. When his pay did not decrease, Captain Basiger should have questioned its accuracy. In such situation, we cannot conclude that Captain Basiger was without fault. Since Captain Basiger should have been aware that he was being paid in excess of his entitlement, he is bound to repay the allowances. See Lieutenant John G. Harrison, Jr. USN, B-198269, Sept. 16, 1980

Captain Basiger suggests that he actually was entitled to BAQ and VHA as of November 27, 1992, the date on which he began making mortgage payments on the home he purchased in Florida. The Air Force provided quarters to Captain Basiger while he was on temporary duty, however, and he was not entitled to further housing compensation for that period of time; in our view, he clearly should have realized that fact. Captain Basiger's decision to purchase a home and his financial arrangements in that regard were personal decisions on his part. Entitlement to military pay and allowances is governed by the applicable law and regulations, and does not vary to accommodate such personal decisions.

Accordingly, Captain Basiger's waiver request is denied, and the Claims Group's settlement is affirmed.

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