



Comptroller General
of the United States

1139168

Washington, D.C. 20548

Decision

Matter of: Lieutenant Colonel Michael J. Gilbreath, USA
- Waiver Request

File: B-256537

Date: August 5, 1994

DIGEST

Army officer who had a 3-year break in service received overpayments of pay beginning when he re-entered active duty in 1977, based on an erroneous Pay Entry Base Date. In 1983, calculations regarding his years of service were corrected, and his Pay Entry Base Date was adjusted, but the Finance Center did not correct the pay date entry on the officer's leave and earnings statements. While the officer received a form indicating that some calculations regarding his time in service had been corrected, it was not clear from the form that the Pay Entry Base Date had been wrong and was being adjusted. Therefore, the officer was not at fault for accepting the overpayments until the Army later discovered them, and the resulting debt may be waived.

DECISION

This responds to an appeal of a Claims Group settlement denying in part Army Lieutenant Colonel (LTC) Michael J. Gilbreath's request for waiver of a debt that arose because he received erroneous payments of basic pay caused by the establishment of an incorrect Pay Entry Base Date (pay date). LTC Gilbreath received the erroneous payments from the time of his reentry into the Army in 1977 until the error was discovered in January 1993. Collection of LTC Gilbreath's debt may be waived under 10 U.S.C. § 2774.

LTC Gilbreath first entered active duty in 1968, serving in either active or reserve status until November 1974. He re-entered active duty in October 1977. At that time, LTC Gilbreath's pay date was erroneously calculated to be October 1, 1970, instead of September 26, 1971, and the erroneous pay date was reflected in his leave and earnings statements. In October 1982, Army Form 185 was completed to verify LTC Gilbreath's service, but the form failed to take into account his break in service from 1974 until 1977. LTC Gilbreath's pay date was not calculated at that time, and the pay date in use was not entered on the form.

In October 1983, a new Form 185 was completed, and this time the break in service was taken into account, thus reducing

LTC Gilbreath's total service time, but not his active service time. This calculation established a corrected pay date of September 26, 1971; that pay date was noted on the Form 185, although there was no indication on the form that anything actually had been changed in that regard. A copy of the corrected Form 185 was sent to LTC Gilbreath and was supposed to be sent to the Finance Center, but the Finance Center never received a copy, so that the leave and earnings statement entry never was changed. LTC Gilbreath's pay continued to be computed using the pay date of October 1, 1970, until the error was discovered in January 1993.

Monthly base pay for the uniformed services is determined on the basis of years of creditable service, with increases in pay occurring generally every 2 years. 37 U.S.C. §§ 205, 1009. Thus, a member whose pay date is established incorrectly, giving him more creditable service than he actually has, receives pay raises prior to the time he or she is entitled to the increase.

The erroneous payments amounted to a net of \$6,261.50. Our Claims Group waived collection of \$3,010.40, the amount LTC Gilbreath received before the recalculation of his pay date in October 1983. Waiver of the balance of \$3,251.10 was denied on the grounds that LTC Gilbreath should have been aware that he was being overpaid after he received the corrected Form 185. LTC Gilbreath has appealed that denial, maintaining that he was unaware that he was being overpaid until the Army discovered the error and so notified him in 1993.

Under 10 U.S.C. § 2774, the Comptroller General may waive a claim against a member arising from erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. However, waiver is precluded if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member. The standard we employ to determine fault is whether a reasonable person should have been aware that he was being overpaid.

We do not view the corrected Form 185 as being sufficient notice to LTC Gilbreath that he was being overpaid for purposes of waiver consideration. The form is complex and contains a number of entries that are difficult to understand without an explanation of their context. Also, to the extent examination of the chronological service entries on the corrected Form 185 indicate that the member's pay date had been recalculated, the passage of 13 months since the previous calculations made that point difficult to grasp. Since the 1982 form did not include a pay date, and the 1983 form did not state the pay date was being corrected, a reasonable person might not realize that

whatever calculations had been corrected on the 1983 form affected the pay date.

In sum, it is our view that LTC Gilbreath was not at fault when he did not recognize, even after October 1983, that the pay date on his leave and earnings statements was incorrect and that he was being overpaid. Accordingly, collection of LTC Gilbreath's debt is waived under 10 U.S.C. § 2774, and the Claims Group's settlement is reversed.

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

Date: August 5, 1994

To: Director, Claims, Group - Sharon S. Green

From: Acting General Counsel - Robert P. Murphy

Subject: Lieutenant Colonel Michael L. Gibreath, USA -
Waiver Request Z-2925823-056 (B-256537)

Attached is your file Z-2925823-056 along with a copy of our decision reversing your determination in the above matter.

Attachment