



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John P. Rieder--Waiver Request

File: B-259199

Date: February 22, 1995

DIGEST

An Air Force member's paydate was incorrectly established as April 15, 1976, instead of April 15, 1987. The incorrect paydate and years of service were reflected on his leave and earnings statements. The resulting overpayments may not be waived under 10 U.S.C. § 2774 because the member had a duty to verify the information on his leave and earnings statements and to bring any errors to the attention of the proper officials.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the waiver request under 10 U.S.C. § 2774 of former Air Force member John P. Rieder for waiver of a debt which arose when his pay was calculated using an incorrect paydate. We affirm the Claims Group's settlement.

Mr. Rieder enlisted in the Air Force on April 15, 1987. His paydate, the beginning date used in calculating his years of service, was incorrectly entered as April 15, 1976. While the error occurred early in Mr. Rieder's military career, it did not begin to cause overpayments until April 28, 1989, when he became eligible for a longevity raise. The paydate was corrected in February 1992, but the overpayments were not discovered until July 1992. Mr. Rieder's pay was corrected at that time, and the overpayments ended on June 30, 1992. Due to the overpayments, Mr. Rieder is indebted to the government in the amount of \$1,989.81. The amount was reduced to \$1,610.33 when \$379.48 which was due Mr. Rieder at separation was applied to the debt.

Under 10 U.S.C. § 2774, the Comptroller General may waive a claim against a member of the uniformed services arising out of an erroneous payment of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. The claim may not be waived, however, if there is any indication of fraud, misrepresentation, fault, or lack of good faith on the member's part.

In our decision Henry A. Pharr, B-197507, June 4, 1980, we dealt with a member who received an overpayment of a reenlistment bonus. Before he reenlisted, he received information on his leave and earnings statements as to the amount of reenlistment bonus to which he would be entitled if he reenlisted. When he reenlisted, his bonus was larger than it should have been. We said that the information that had been on his leave and

earnings statements put him on notice as to the correct amount of his bonus, and we therefore denied waiver.

Moreover, in our decisions we have emphasized the duty of a payee to verify the information on his leave and earnings statements. In our decision Roosevelt W. Royals, B-188822, June 1, 1977, we discussed the duty of a payee to verify the information on his leave and earnings statements. If he is provided information which if reviewed would indicate an error, waiver of a resulting overpayment is precluded because he is at least partially at fault for not taking action to have the error corrected.

In the present situation, Mr. Rieder regularly received leave and earnings statements which clearly indicated an error. At least by November 1988 he was receiving statements which indicated that he was an E-2 with 12 years of service with a pay date of April 15, 1976. Mr. Rieder should have detected this error and brought it to the attention of the proper Air Force officials, especially since, as Mr. Rieder himself notes, he was 8 years old in 1976. If he had taken action promptly, the error could have been corrected before any overpayments were made. Mr. Rieder continued to receive leave and earnings statements for most of the period of the overpayments, and by January 1992 he was designated on the statements as an E-4 with 15 years of service. Since Mr. Rieder should have noticed the error and taken corrective action, we cannot conclude that he is entirely without fault regarding the overpayments. Waiver is therefore precluded.

Accordingly, we affirm the Claims Group's denial of Mr. Rieder's waiver request.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel