

DECISION

DIGEST - L - mil

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-184038

DATE: AUG 20 1975

AUG 20 1975

MATTER OF: Waiver of debt -

DIGEST: Erroneous payment resulting from failure to deduct mid-month payment already paid Army member from final payment upon discharge is waived in view of short notice member received of early discharge and serious family problem which occurred at time of discharge. However, erroneous payment resulting from end-of-month check mailed to member subsequent to discharge after he had already received mid-month and final payments on discharge may not be waived since he should have inquired as to correctness of such payment.

This action is in response to correspondence received from former Army member which constitutes an appeal from the determination of the General Accounting Office, Transportation and Claims Division, which by letter dated April 21, 1975, denied Mr. request for waiver of the claim of the United States against him for \$510.

From the record the facts in the matter appear to be as follows. Effective October 1971, while on active duty in the Army, Mr. elected to receive mid-month checks for pay and allowances in the maximum amount due him. Such checks were issued by the Army Finance and Accounting Center on the 15th of the month and the last day of the month, each representing one-half of his net monthly entitlements. On December 15, 1971, Mr. was issued his mid-month check for \$255. On December 22, 1971, he was discharged from the Army prior to the normal expiration of his term of service. Incident to his discharge the total amount due him was manually computed by the local finance officer as \$406.78 for pay and allowances for the entire period of December 1-22, 1971, plus \$0.63 due from November 1971, \$94.24 for separate rations for a retroactive period, and \$115.50 travel allowance, less authorized deductions and collections totaling \$129.17, leaving the net amount of \$487.98, which was paid to him at discharge. Through administrative error no deduction was made from that payment for the mid-month check of \$255 previously paid to him on December 15, 1971. Also due to administrative error, an end-of-the-month check covering the

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period December 16-31, 1971, was mailed to him subsequent to his discharge. In further reviewing the matter we now find that the Army also made an erroneous savings bond allotment in the amount of \$6.25 on Mr. _____ behalf at the time of his discharge. Thus, his total indebtedness resulting from the two erroneous payments and the erroneous bond allotment was \$516.25.

Apparently the two erroneous payments totaling \$510 were discovered by the Army in August 1973 and Mr. _____ was advised by letter dated August 24, 1973, of the debt and was requested to make arrangements to repay the \$510. The Army's collection efforts were unsuccessful and the debt was referred to our Transportation and Claims Division for further action. By letter dated March 22, 1974, Mr. _____ requested that the debt be waived indicating that he did not understand how his final payment could have been an overpayment and stating that he never accepted any money from the Army on false pretenses.

The Army administrative report in the matter states that there is no indication of fraud or misrepresentation on the part of Mr. _____ or any other person having an interest in the waiver of the claim. That report noted, however, that Mr. _____ knew that on December 15, 1971, he had received a mid-month check for \$255 which covered net pay due him through that date, while his final pay voucher, which he signed, shows payment as being made for the entire period of December 1-22, 1971, with no deduction for the mid-month payment. The administrative report also indicated that it cannot be presumed that Mr. _____ did not know that he was not entitled to the end-of-the-month check for \$255 which he received subsequent to discharge. Under those circumstances the administrative report recommended that the request for waiver be denied in its entirety.

Based on these facts, the Transportation and Claims Division considered Mr. _____ request for waiver of the debt under the provisions of 10 U.S.C. 2774 (Supp. II, 1972) and concluded that Mr. _____, as a reasonable and prudent member of the Army, should have realized that he was not entitled to the erroneous payments and, therefore, the request for waiver was denied.

Under the provisions of 10 U.S.C. 2774 (Supp. II, 1972) and the implementing standards for waiver a claim may be waived if

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its collection would be against equity and good conscience and not in the best interests of the United States, and there exists no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

In a letter dated May 5, 1975, Mr. _____ provides the following further information concerning the circumstances surrounding the receipt of his final pay at the time of his discharge:

"I would like to familiarize you with the events which preceded my separation from the Army in December 1971. I was notified only six days in advance of my discharge. Originally, my tour of duty was to have ended in May 1972. My wife, pregnant at the time, came to pick me up at Fort Carson the day of my discharge. She aborted while at the base, and I had to rush her to hospital. The doctor decided to perform the appropriate surgery for her, but I had to leave her alone at the hospital; I had to complete the out-processing requirements. At the Finance Department I received a final settlement, but my wife's welfare and the loss of our child engrossed my mind, not the amount of money I was issued."

In view of this additional information it now appears that Mr. _____ could not reasonably have been expected to be aware of the erroneous payment (\$255) made to him at the time of his discharge and the erroneous bond allotment (\$6.25) made on his behalf at that time. Compare B-174531, January 5, 1972. Accordingly, that amount of the debt (\$261.25) is hereby waived.

However, it is our view that after receiving a December mid-month check and the final payment at discharge, Mr. _____ receipt of the regular end-of-the-month check in the mail at least 10 days subsequent to his discharge should have put him on notice of the strong possibility of an error about which he should have inquired to the appropriate officials. This he did not do. In such circumstances we must sustain the denial of waiver of that portion of the indebtedness (\$255) and Mr. _____ should make

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arrangements to repay that amount by check or money order made payable to the United States General Accounting Office, and forwarded to Post Office Box 2610, Washington, D.C. 20013.

R. F. KILLAM

[Deputy] Comptroller General
of the United States