

B-188709-O.M.

NOV 1 1977

Director, Claims Division

Comptroller General R.F. KELLER

Waiver of Debt of Sergeant First Class , USA
(Retired),
B-188709-O.M.

Returned herewith is Claim File Number Z-2567500 pertaining to an appeal by Sergeant First Class , USA (Retired), from your determination which denied in part his request for waiver of his debt to the United States.

The debt arose due to administrative errors which caused overpayments of pay and allowances in the gross amount of \$1,429.84 comprised of the following:

\$413.71 for 20 days' excess leave for which the member was paid pay and allowances;

\$635 for a casual payment of pay and allowances received on March 25, 1971, representing March 1971 pay and allowances;

\$372 for a duplicate payment of pay and allowances for the period June 1 through June 30, 1968; and

\$9.13 for an overpayment of pay on his June 1968 pay account.

The excess leave and the casual payment were noted on the member's final pay voucher for collection at the time of his retirement on March 31, 1971, at which time he received no payment because his entitlements were set off against his debt. Collections from his pay applied to the debt total \$657.75. The duplicate payment for June 1968 and the overpayment for June 1968 were discovered during a review of the member's pay record on December 10, 1971. A formal request for waiver of the amounts detailed above was made to the Army Finance Center, Indianapolis, Indiana, by the member in a letter dated July 15, 1974.

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The file indicates that the first notification of indebtedness other than the entry on the final pay voucher at time of retirement was addressed to the member by the Army Finance Center in a letter dated February 21, 1972. The file also indicates that the member made inquiry about this matter soon thereafter. Although the nature of that inquiry is not reflected, the file does contain a letter dated May 12, 1972, addressed to the member which acknowledges his request for additional information concerning his indebtedness to the United States.

By letter dated November 11, 1976, the Claims Division waived \$381.13 of the debt comprised of the June 1968 duplicate payment (\$372) and the overpayment (\$9.13). Waiver of the remainder of the claim was denied on the basis that since the pay and allowances paid during the excess leave and the overpayment resulting from the unsettled casual payment were discovered at the time of the member's retirement on March 31, 1971, and his request for waiver was not received until July 24, 1974, in excess of 3 years following date of discovery, these sums could not be considered for waiver. In view of the previous collections of \$657.75 and the \$381.13 waived, the member's current debt is \$390.96.

The 3-year limitation period in which requests for waiver under 10 U.S.C. 2774 (Supp. II, 1972) must be received is considered as beginning to run from the date the erroneous payment "was discovered" by the administrative office. That is, from the date it is definitely determined by an appropriate official that an erroneous payment had been made. The date of notice to the member is not relevant in fixing such date. See 54 Comp. Gen. 133 (1974) and B-172885, May 15, 1973.

While we recognize that in some instances the discovery date may be difficult to determine, it is incumbent upon the agency concerned upon definitely discovering an erroneous payment to record the date and without undue delay advise the member involved of the erroneous payment. Also, in cases in which it is not clear as to when the erroneous payment was discovered any reasonable doubt should be resolved in favor of the debtor. See B-184219-O.M., February 4, 1976, and B-152040-O.M., May 10, 1973.

In the present case, while an initial determination was made at the time of member's retirement in March 1971 that an overpayment had been made and a notation to that effect made on his final pay voucher dated April 13, 1971, the final determination of the total amount owed and the source of the debt was not made until December 10, 1971. Therefore,

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December 10, 1971, may be considered the date of discovery of the erroneous leave payments. Compare B-152040-O.M., B-158422-O.M., May 10, 1973; and B-186869, February 8, 1977. Since the request for waiver was received in the Office of the Army Finance and Accounting Center on July 29, 1974, it comes within the purview of 10 U.S.C. 2774.

It is reported that the payments for excess leave were caused by administrative error in authorizing leave and failure to effect stoppage of pay and allowances at the proper time. It appears that the errors were made in the summers of 1968 and 1969 when the member was being transferred to and from Vietnam. While ordinarily a member should know when he has used more leave than he has earned, in this case the member's records were in a state of flux at the time of the errors and, he indicates, that he had several subsequent "record checks" which indicated no errors. Also, we note that it took 2 to 3 years before the errors were discovered. In these circumstances it appears that the excess leave payments were not the fault of the member and there is no indication of fraud or misrepresentation on his part. Therefore, the portion of the debt consisting of excess leave (\$413.71) is hereby waived.

With regard to the casual payment of \$635 made on March 25, 1971, it appears that it was proper when made and, therefore, is not for consideration for waiver under 10 U.S.C. 2774. See B-152040-O.M., B-158422-O.M., May 10, 1973, *supra*.

Sergeant should be advised of this action and his right under 10 U.S.C. 2774(c) to file claim within 2 years of the date of waiver for refund of any of the waived amount collected from him or refunded by him.

Attachment

CHIEF, DEPT. OF THE ARMY

review

Enclosure

Just a review to assist

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