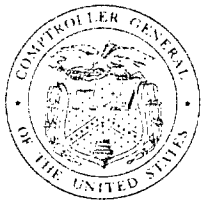


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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-194738

DATE: February 29, 1980

MATTER OF: Lieutenant Commander Melvin W. Mills, USN,  
Retired

DIGEST: Considering the amount of the overpay-  
ments, a service member who received  
erroneous payments of flight pay at a  
time he was not qualified to fly and  
did not fly should have known that he  
was receiving excess payments, and that  
he would be required to refund them.  
Therefore, he is not without fault in  
the matter so as to permit waiver of  
his debt. Further, financial hardship,  
alone, resulting from collection is not  
sufficient reason for a member to  
retain the payments that he should  
have known did not belong to him.

Lieutenant Commander Melvin W. Mills requests recon-  
sideration of our Claims Division's September 26, 1978  
~~denial of his application~~ for waiver of his debt to the  
United States in the total amount of \$6,007.50. The  
debt arose from erroneous payments of flight pay made  
to him incident to his service in the United States  
Navy. The denial of waiver is sustained.

REQUEST

While serving as a lieutenant commander in the  
Navy, Mr. Mills through disbursing error was paid  
flight pay during the period August 15, 1973, through  
September 15, 1975, when he did not fly and while not  
physically qualified for duty involving the actual  
control of aircraft.

Mr. Mills, in his original request for waiver,  
contended that he did not know or suspect that he was  
being overpaid; that although he was medically grounded,  
he was transferred in September 1973 with orders to  
duty involving flying for operations and training; and  
that he was never officially notified that by failing  
to meet flight time minimums, he forfeited flight pay.  
Further, he stated that after his transfer, he was  
informed that certain officers were not required to  
meet flight minimums and he believed that he remained

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eligible for flight pay. In his appeal, he also contends in essence that during the period of the overpayment he flew in a crew status and that he should have been notified by letter that he was not entitled to the flight pay. Further, he stated that repayment of the debt would result in undue hardship on his family.

Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts when collection would be against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) precludes waiver if, in the opinion of the Comptroller General--

"\* \* \* there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member \* \* \*"

We interpret the word "fault", as used in 10 U.S.C. 2774, as including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in light of all of the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, Mr. Mills has indicated that he knew that he was medically grounded, that he was aware of flight time minimums, and that his eligibility for flight pay was questionable. There is no evidence of any attempt on his part to obtain a determination of his continued entitlement to the flight pay. Failure to receive a letter of notification did not relieve an officer of his rank and experience of the responsibility to determine his correct status

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and his entitlement to receipt of flight pay after June 1973.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See decisions B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein. Also, financial hardship alone, resulting from collection, is not a sufficient reason to retain the payments he should have known did not belong to him. B-183460, May 28, 1975; B-192380, November 8, 1978.

Since Mr. Mills had a duty and legal obligation to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected, we are unable to conclude that he is free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States.

Accordingly, the action of our Claims Division denying waiver is sustained.



For the Comptroller General  
of the United States