

DECISION

13198 PLM II

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548PLM²

FILE: B-197275

DATE: March 21, 1980

MATTER OF: Lieutenant Commander Ronald W. Phoebus, USN

[REQUEST for RELIEF of DEBT]

AGC00001

DIGEST: Service member receiving erroneous payments of BAQ due to administrative error during a period he and his dependents occupied Government quarters, who failed to question the accuracy of his pay after doubting his entitlement and being alerted by the information on his Leave and Earnings Statements (LES's) is not without fault so as to permit waiver of indebtedness.

Lieutenant Commander Ronald W. Phoebus, USN, requests reconsideration of our Claims Division's July 10, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$4,753.88. The debt arose from erroneous payments of basic allowance for quarters (BAQ) while assigned to Government quarters. Denial of the waiver is sustained.

The record shows that Commander Phoebus and his dependents occupied quarters at Khatami Air Base, Iran, on April 27, 1976. The quarters were provided by the Government of Iran under a contract with the United States Government and as such constitute Government quarters. Due to administrative error disbursing officials failed to stop payment of BAQ to which Commander Phoebus was not entitled while occupying Government furnished quarters. 37 U.S.C. 403(b) (1976). As a result he was erroneously paid BAQ for the period April 27, 1976, through October 30, 1977, in amounts ranging from \$216.60 to \$301.80 per month.

Commander Phoebus, in his original request for waiver, indicated that upon arrival of his dependents in Iran in April 1976, his pay entitlements were handled by an inexperienced Navy member located approximately 250 miles from his assignment; that there was some question as to entitlement to BAQ since the quarters were provided by the Government of Iran; that he did not receive Leave and Earnings Statements (LES's) promptly; and that when he

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noticed on his LES's that he was receiving BAQ, he notified appropriate officials and was assured that the matter would receive proper action. In his appeal, he also contends in essence that the administrative problems of personnel in Iran during the period of the overpayment were not adequately considered and that an enlisted member under identical circumstances had been granted waiver while he was denied waiver.

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 the 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, Commander Phoebus had doubt from the outset of his entitlement to receive BAQ when furnished quarters and should have fully questioned his net amount of pay as soon as he received a LES showing a BAQ payment. It is immaterial that the quarters were being supplied to the United States Government by the Government of Iran. He should have known that he was not entitled to live in Government quarters and still receive BAQ (paid in lieu of furnished quarters) and he should have requested a complete explanation of

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his pay rather than a verbal assurance that it was accurate. Since the correctness of the payments received after April 27, 1976, were so doubtful, he should have, at a minimum, set aside these excessive amounts until a definite determination and statement had been made to him fully explaining his entitlement. Further, he should have known that if he continued to be overpaid, he would eventually be required to repay the erroneous amounts.

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 by equity and good conscience to make restitution. See decisions B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein.

Since Commander Phoebus had a duty and a 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. Therefore, collection action is not against equity and good conscience nor is it contrary to the best interests of the United States.

The enlisted member who became indebted to the United States under identical circumstances to whom Commander Phoebus referred was also denied waiver by our Claims Division on July 16, 1979.

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

Hilton J. Douglas
For the Comptroller General
of the United States