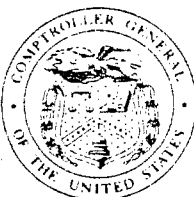


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DECISION



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

[Request for Waiver of Indebtedness]

FILE: B-198269

DATE: September 16, 1980

MATTER OF: Lieutenant John G. Harrison, Jr., USN

DIGEST: Service member receiving erroneous payments of basic allowance for quarters due to administrative error during a period he occupied Government quarters, who failed to question the accuracy of his pay when he received unexplained increases in his normal net pay, is not without fault so as to permit waiver of indebtedness.

Lieutenant John G. Harrison, Jr., USN, requests reconsideration of our Claims Division's August 1, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$946.49. The debt arose from erroneous payments of basic allowance for quarters (BAQ) he received while living in Government quarters. Denial of the waiver is sustained.

The record shows that Lieutenant Harrison through administrative error was erroneously paid BAQ for the period June 27, 1977, through November 15, 1977, in amounts ranging from \$196.80 to \$219.90 per month while assigned to Government quarters. In those circumstances he was not entitled to BAQ. 37 U.S.C. 403(b) (1976).

By allotment, beginning in May 1977 Lieutenant Harrison had his pay and allowances sent to his bank in the amount of \$1,054. His net pay, after the allotment to the bank was paid, was \$9 on June 15, 1977, and \$6 on June 30, 1977. The net pay amounts were paid directly to him. On July 15, 1977, his net pay increased to \$125. Thereafter, his net semimonthly pay for the period ending July 31, 1977, was \$99 and his net bimonthly pay was \$99 for each subsequent pay period through September 30, 1977. For pay periods beginning October 1, 1977, and continuing through November 15, 1977, net bimonthly payments increased to \$109 each pay period. During this entire period his allotment continued to be paid directly to his bank. The increases in net pay he received were caused by erroneously crediting him with BAQ due to confusing his pay record with that of another officer.

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In his request for waiver Lieutenant Harrison indicates that he considered the first leave and earnings statement (LES) on which he noted an overpayment of \$109 was due to the delay in processing his bank account, and that he did not have his LES's in his personal files during some of the payment periods. He also says that he was away from his office on a demanding schedule and temporary duty during the times that his LES's would normally be delivered, and that he received a pay increase in October 1977. He notes that the error was discovered after his contacting the disbursing clerk when a review of his August LES revealed the significant overpayment. In his appeal, he also contends that the overpayment was through no fault by him and that he had no reliable method of determining his actual pay and entitlements during the periods of overpayment due to not receiving his LES's promptly.)

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.

Because he knew that approximately all of his pay and allowances had been deposited in his bank account per

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his allotment and he was aware of his usual net pay in June, he should have been alerted to a possibility of error and questioned the correctness of his pay when he received unexplained increases beginning with the July 15 payment. The fact that he may not have received all of his LES's did not relieve an officer of his rank and experience of his responsibility to make timely inquiry of appropriate finance personnel. [Since the correctness of the payments received after July 15, 1977, 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 Lieutenant Harrison should have been aware of the strong possibility that he was being overpaid, and he 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. Therefore, collection action is not against equity and good conscience nor is it contrary to the best interests of the United States.

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

For the

Harry R. Van Cleave
Comptroller General
of the United States