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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548*[Request for Waiver of Indebtedness]*

FILE: B-199807

DATE: February 9, 1981

MATTER OF: Petty Officer Allan L. Gaynor, USN

- DIGEST: 1. Lack of substantial changes in pay when they would ordinarily be expected, constitutes sufficient notice to alert a reasonable person that an error may have been made. Thus, where a member moved into Government quarters after the first of the month and his BAQ was not stopped until the next month, where he received a substantial reduction in pay and his next earnings statement showed he was not receiving BAQ, waiver is granted. However, waiver is not granted for 10 \$120 monthly allotment payments not deducted from the member's pay since, although he received no earnings statements he should have expected his pay to decrease and when it did not, he should have known he was receiving overpayments.
2. Financial hardship, standing alone, is not sufficient reason to allow waiver of a debt which arises from receipt of funds to which the debtor should have known he was not entitled.

This decision is in response to a letter dated May 19, 1980, forwarded to us by the Navy Family Allowance Activity, which constitutes an appeal by Petty Officer Allan L. Gaynor, USN, from our Claims Division's September 7, 1979 action which granted in part and denied in part his request for waiver of the claim against him by the United States for erroneous overpayments of pay. The total claim of the Government against him was \$1,471.08. Our Claims Division waived \$114 of the Government's claim and denied waiver of \$1,357.08. Petty Officer Gaynor is appealing that part of our Claims Division's action which denied him waiver of \$1,357.08.

The debt arose as follows. Petty Officer Gaynor was assigned Government quarters on December 3, 1976, but his basic allowance for quarters (BAQ) was not terminated

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until January 1, 1977. As a result, he erroneously received BAQ for the period December 3 through December 31, 1976, for a total of \$157.08. Also, he increased an allotment to his credit union from \$70 per month to \$190 per month effective April 1977. Due to an administrative error the additional \$120 per month was not deducted from his pay, and therefore, he erroneously received an additional \$120 per month for the period April 1, 1977, through January 31, 1978, a total of \$1,200. Finally, his debt increased to \$1,471.08 in January 1978, when a disbursing error in calculating his pay for that month caused him to receive an additional \$114 in pay for that month. The erroneous payments were discovered in January 1978.

The law governing waiver of claims of the United States arising out of erroneous payments of pay and allowances made to or on behalf of a member of a uniformed service is contained in 10 U.S.C. 2774 (1976). That provision authorizes the Comptroller General to waive such a claim if "the collection * * * would be against equity and good conscience and not in the best interest of the United States." However, subsection 2774(b)(1) prohibits the exercise of that authority if there is "an indication of fraud, misrepresentation, fault or lack of good faith on the part of the member * * *."

Since there is no indication of fraud, misrepresentation or lack of good faith on the part of the member in this case, the determination of whether the debts resulting from the erroneous BAQ payment and failure to deduct the allotment payments turns on whether the member was at "fault" in these matters. As is noted above, our Claims Division previously determined that the conditions were met for waiver of the \$114 overpayment of pay and waived that amount.

[We interpret the word "fault" as used in 10 U.S.C. 2774(b)(1) as including something more than a proven overt act or omission. Thus, fault is considered to exist if in light of all known facts it is determined that the individual should have known that an error existed and taken action to have it corrected.] The

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standard we employ is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements. David K. Halseth, B-184783, May 12, 1976.

As to the overpayment of \$157.08 of BAQ for December 1976, we note that according to the member's pay records, his pay in November 1976 was \$329. In December, when the BAQ should have been deducted, he received payments in the amounts of \$329 and \$331. Then in January his pay decreased to \$245. Thus, there occurred a substantial decrease in his pay at that time. He indicates that since his pay then decreased and his statement showed he was no longer receiving BAQ, he thought his pay was correct. In this regard, we have taken the position that substantial and inexplicable changes in pay, or the lack of such changes when they would ordinarily be expected, constitute sufficient notice to alert a reasonable person that an error may have been made. Philip L. Marlowe, B-192882, April 2, 1979. In view of the decrease in the member's pay in January, the fact that he had moved into Government quarters after the first of December, and the BAQ was paid erroneously for only 1 month, we can understand why he did not realize he was overpaid BAQ. Accordingly, the \$157.08 erroneous BAQ payment is hereby waived.

In regard to the overpayments totaling \$1,200 due to the administrative error of not deducting the monthly allotment of \$120 paid to the member's credit union for 10 months, although he did not receive his leave and earnings statements during this period, he, as a reasonable person, should have expected that his net paychecks after establishment of the increased allotment would not exceed those received in the month preceding this event. Philip L. Marlowe, B-192882, April 2, 1979. In fact, he states that he realized in April that his pay had not been reduced to cover the allotment and questioned a disbursing clerk about it. He states that the clerk told him the deductions would begin in May. According to his pay records, his pay prior to April 1, 1977, was \$233. During April and

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May his pay did fluctuate, but the total amounts he received per month were approximately equal to his previous monthly totals. We further note that in June his pay stabilized at \$222 per pay period. The record indicates that he did make several attempts within the period of 10 months to obtain a leave and earnings statement and to verify the accuracy of his pay. However, since he was aware that no allotment deduction had been made in April, and that his pay was not reduced by the appropriate amount in succeeding months, we believe that he should have realized that the additional allotment had not been deducted from his pay, and that he was being substantially overpaid. In those circumstances, he had a duty to retain the excess amounts paid him in order to refund the Government when his pay was finally resolved. Petty Officer Henry T. Howard, B-196637, February 27, 1980; Chief Petty Officer Robert Frasure, B-192611, November 3, 1978.

Finally, Petty Officer Gaynor has indicated that repayment will cause him financial hardship. While we regret this fact, financial hardship standing alone is not sufficient reason to allow waiver of a debt which arises from receipt of funds to which the debtor should have known he was not entitled. Sergeant Charles H. O'Brien, Jr., B-193550, February 15, 1979.

Accordingly, the action taken by our Claims Division denying waiver of the \$1,200 debt arising out of the failure to deduct the allotment payments is sustained.

Milton J. Bowler

For the Comptroller General
of the United States