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DECISION



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

FILE: B-203188

DATE: December 15, 1981

MATTER OF: Sergeant

, USAF

DIGEST: Service member may be granted waiver of erroneous payments of pay and allowances made on discharge and during the month after separation since he was convinced by discussions with administrative officials that no recoupment was being made for the unearned portion of a reenlistment bonus and he had reasonable expectation that he was being paid correctly. However, he is not without fault so as to permit waiver in accepting an improper allotment payment to his credit union account after discharge, since he should have known that he would be required to return the excess sums.

Sergeant , USAF, requests reconsideration of our Claims Division's (now Claims Group) June 12, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$986.66. The debt arose from erroneous payment of pay and allowances made to him incident to his service in the United States Air Force. Waiver is granted for erroneous payments made on discharge and thereafter when the information he received from personnel officials indicated that his pay was correct, but denial of waiver of an erroneous payment to his credit union account is sustained.

At the time of his separation from the Air Force on August 9, 1976, Sergeant pay account showed that he had entitlements of \$802.18. However, as a result of his early discharge he became indebted for \$811.91 because he did not serve a full tour of duty for which he was paid a reenlistment bonus. Therefore, he was indebted to the United States for \$9.73 at the time of his discharge. Thus, he was not entitled to any payments and in fact should have been required to remit \$9.73.

During the month of August as a result of administrative error the Air Force made payments to Sergeant of \$445.93, \$189, and \$192. Additionally, an improper allotment of \$150 was made to his account at a credit

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union. These payments totaled \$976.93 and when added to his original debt of \$9.73 increased his debt to \$986.66.

Initially, the Air Force determined that he was also indebted in the amount of \$134 for an allotment paid to his former wife after his discharge. However, it was later determined that he had no liability with regard to this payment.

Sergeant , in his original request for waiver, contended that he was separated from service due to hardship. Further, he stated that he was informed before separation by personnel officials that he would not be required to make any repayment. In his appeal, he also indicates that before he applied to be separated, he had lengthy discussions with the Consolidated Base Personnel Office and that his decision regarding separation was based upon assurances that he would not be required to reimburse the Air Force for the unearned portion of his reenlistment bonus. He further states in essence that he was prepared to complete his time of enlistment because of his inability to make restitution, but selected an early release because he was convinced that reimbursement was not required and did not know that he had been misled by Personnel Office officials.

Section 2774^X 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,^X 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 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.

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See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, Sergeant [redacted] was led to believe that there would be no recoupment of the unearned portion of his reenlistment bonus and thus he had insufficient information to determine that he was overpaid in his final payment of \$445.93 upon discharge or in his subsequent payments of \$189 and \$192 after release. Further, it does not appear that he was aware that an error existed which might have been corrected until he was notified in a letter from the Air Force Finance and Accounting Center dated May 20, 1977. These payments in the total amount of \$826.93 are the amount of pay that he might have expected to receive for his final days of service plus accrued leave. On the record before us it appears he may have reasonably considered them correct. Therefore, the excess payment of \$826.93 is waived. However, upon discharge and receipt of expected final payments, he had no reason to believe that he should have an August payment in the amount of \$150 made to his credit union account.

Therefore, Sergeant [redacted] should have known beginning with the receipt of the \$150 deposit to his credit union account that he was receiving monies to which he was not entitled. Such knowledge on his part carried with it a duty and legal obligation to bring it to the attention of appropriate officials and to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected. Since he did not do so, it is our view that he did not accept such payments in good faith, he is not free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States. Since the reenlistment bonus was proper when made and this Office is precluded from waiving any portion of unearned bonuses under the provisions of 10 U.S.C. 2774, Sergeant [redacted] is still liable for repayment of the balance of \$9.73.

Accordingly, waiver is granted for excess payments of pay and allowances in the total amount of \$826.93, but the action taken by our Claims Division denying waiver of the \$150 debt created by the erroneous payment to Sergeant [redacted] credit union account is sustained. His debt to the United States is now \$150 plus \$9.73

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which could not be considered for waiver. Sergeant has 2 years from the date of this waiver to apply to the Air Force for refund of any amounts paid to liquidate the waived debt. 10 U.S.C. 2774(c) (1976).

for *Milton J. Fowler*
Comptroller General
of the United States