

**DECISION**

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

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**FILE:** B-214932**DATE:** May 29, 1984**MATTER OF:** Brian P. Happy**DIGEST:**

A former Coast Guard member received erroneous payments due to failure of the Coast Guard to deduct a dependency allotment and an appropriate amount for a bond allotment from his pay. As a result his biweekly net pay increased by \$100 during a period when there was no increase in his entitlements. This should have alerted him to the fact that his pay may have been erroneous. Since he failed to make prompt inquiry of the appropriate finance officials when he received an unexplained increase in pay he is partially at fault for the erroneous payments thus precluding waiver of the Government's claim against him.

Mr. Brian P. Happy, a former member of the United States Coast Guard, requests reconsideration of our Claims Group's denial of his application for waiver of his debt to the United States in the amount of \$3,813.50. The debt arose while he was on active duty in the Coast Guard as a result of erroneous payments he received due to the failure of the Coast Guard to deduct a dependency allotment from his pay and an appropriate amount for a bond allotment as well as an erroneous payment of an additional dependency allotment after discharge. In light of the facts presented, and the applicable provisions of law our Claims Group's action in this matter is sustained.

Mr. Happy was overpaid \$3,813.50 during the period January 1979 through December 1980. This overpayment occurred after Mr. Happy authorized a \$200 dependency allotment to be sent to his parents beginning in June 1976. The allotment was sent as directed and a corresponding deduction was made from his monthly pay through December 1978. However, starting in January 1979, the \$200 was not deducted from his pay and as a result, Mr. Happy was overpaid \$3,600 during the period July 1979 through June 1980 prior to his

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discharge. The allotment was not stopped upon Mr. Happy's discharge in June 1980 and the allotment payments continued through December 1980. The checks for August through December were returned and cancelled. The \$200 check for July 1980 was not returned, increasing the amount of overpayment due to the allotments to \$3,800.

Mr. Happy requested a savings bond deduction of \$18.75 but due to an administrative error only \$18 was deducted from his pay each month during the period January 1979 through June 1980, resulting in an underdeduction of \$13.50. Savings bonds issued erroneously during the period July 1980 through November 1980 were returned and cancelled. The total amount overpaid for the periods as stated above is \$3,813.50.

Mr. Happy in his original application for waiver contended that when he was discharged in June 1980, he was unaware that he had been overpaid. He stated that he did not cancel his allotment in January 1979, because the allotments were intended to cover insurance and car payment. He further indicated that after he married on March 31, 1979, he continued the allotments to his parents because of other financial obligations in Missouri. He also indicated that he believed the check for \$200 and savings bond received in July 1980 had been deducted from his pay. However, he stated further that after receiving another \$200 check in August, he concluded an error existed and put the checks and bonds in a safety deposit box until he was instructed to return them to the Coast Guard.

Our Claims Group denied Mr. Happy's waiver application on grounds that when his pay increased by \$200 a month in January 1979 for no obvious reason, he should have realized he was being overpaid. Further, that when he knew or should have known that he was receiving pay to which he was not entitled, he had a duty to retain such amounts for subsequent refund to the Government and to make prompt inquiry to appropriate officials concerning his pay. By failing to do so, he was partially at fault in the matter, which statutorily precludes waiver of his debt.

In his appeal, Mr. Happy contends in essence that while in the Coast Guard he did not know what amount of pay he should have received each pay period and still does not know. Further, he states that when he married in March 1979, he thought that his pay increase was due to

receiving basic allowance for quarters at the with dependent rate. Further, since the Coast Guard had indicated in their submission to the General Accounting Office that conditions for waiver were met, he believes that he is entitled to a hearing in the matter.

Our procedures do not provide for formal hearings on a request for waiver of the Government's claim against an individual arising out of an erroneous payment. Whether to grant a request for waiver is decided on the basis of a written record consisting of the agency's report and the individual's statement of why waiver should be granted. An individual seeking waiver may submit any evidence and advance any reasoning in support of his claim.

Subsection 2774(a) of title 10, United States Code, provides in pertinent part that a claim against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, the collection of which "would be against equity and good conscience and not in the best interest of the United States," may be waived in whole or in part. Subsection 2774(b) further provides that the Comptroller General may not exercise his authority to waive any claim:

"(1) if, in his opinion, 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 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. Matter of Seacrest, B-201814, September 18, 1981, and 56 Comp. Gen. 943 (1977).


In the latter part of 1978, Mr. Happy's biweekly net pay was consistent with only slight variations of a few dollars. However, in January 1979 his biweekly net pay increased approximately \$100 with no corresponding increase in his entitlements. It was not until 3 months later that

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he became entitled to basic allowance for quarters which had a substantial effect on his net pay. At the time he received this unexplained increase he should have contacted the disbursing officer or other officials maintaining his pay records and asked for an explanation of the increase. Had he done so, the error in failing to deduct for his allotments as well as the undercharge for savings bonds would probably have been immediately detected and corrected. Since Mr. Happy failed to make reasonably prudent inquiry, we consider him partially at fault in the matter, and we are precluded by 10 U.S.C. 2774(b) from granting his application for waiver. Compare Matter of Sharp, B-198170, June 25, 1980; Matter of Miller, B-203213, December 21, 1981, and Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

Accordingly, the action by our Claims Group denying waiver is sustained.

*for*   
Comptroller General  
of the United States