

FORM 2
P/M 2

DECISION



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

FILE: B-217914

DATE: June 25, 1986

MATTER OF: Reconsideration - Lieutenant Colonel
Joseph D. McDonald, USAR, Retired

DIGEST:

New evidence from a retired service member establishes that at the time he erroneously executed a form indicating he was not receiving Veterans Administration compensation and during the period he received resulting overpayments of retired pay, his poor health and mental condition made it unlikely that he was aware of having erroneously executed the form and receiving overpayments. Accordingly, the previous denial of waiver of his debt (B-217914, June 11, 1985) is reversed and waiver is granted.

Lieutenant Colonel Joseph D. McDonald, USAR, Retired, seeks reconsideration of our decision^{1/} sustaining the action of the Claims Group denying his request for waiver of a debt to the United States. The Claims Group had denied Colonel McDonald's request for waiver of his debt of \$26,004.62 to the United States arising from simultaneous payments of Army retired pay and Veterans Administration disability compensation. Based on new evidence, we grant waiver of the debt.

As stated in the prior decision, the relevant facts are that:

"Colonel McDonald has been receiving veterans compensation from May 24, 1957, to present. On August 11, 1975, when he became 60 years old, he became entitled to retired pay under the provisions of 10 U.S.C. § 1331-1337. He received both the Veterans Administration compensation and retired pay from that date until November 1983. In order

^{1/} Colonel Joseph D. McDonald, USAR, Retired, B-217914, June 11, 1985.

to be entitled to Veterans Administration compensation and retired pay, a member must waive his retired pay in an amount at least equal to the Veterans Administration compensation. See 38 U.S.C. § 3105.

"Colonel McDonald apparently did not execute a waiver of his retired pay, as required, until 1983. However, he did indicate on a form executed in connection with his application for retired pay that he was not receiving compensation from the Veterans Administration."

Colonel McDonald also indicated that he was in poor health at the time the payments began, could not remember erroneously executing the retired pay form and thought he was receiving amounts to which he was entitled. However, based on these facts we determined that while administrative error on the part of the Government may have contributed to the overpayments continuing for a protracted period, Colonel McDonald must be considered to have been at fault in that he furnished inaccurate information. The fact that he may have been in poor health at the time he erroneously executed the form was not considered to relieve him from the responsibility of receiving the dual payments over the 8-year period. Consequently, since he was found to be at fault, waiver was precluded by the express language of the waiver statute, 10 U.S.C. § 2774.

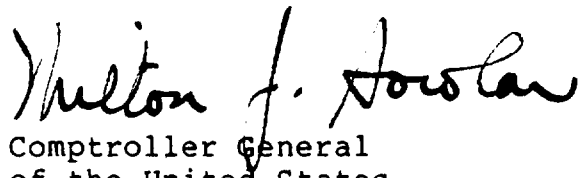
In seeking reconsideration, Colonel McDonald has advised that he has been ill since the early 1970's and his illness and the medications prescribed for him have seriously affected him physically and mentally over the years. He indicates that during 1975 when the erroneous payments began, and subsequently, he was suffering blackouts, strange behavior, memory loss and severe depression. He also indicates that he had been hospitalized for mental problems in a Veterans Administration hospital in 1972 and 1977. It also appears that the Veterans Administration has rated him 100 percent disabled due to physical and nervous disorders.

In support of his request for reconsideration, Colonel McDonald has now provided documentary evidence, in the form of medical records and a letter from his orthopedic surgeon, regarding his medical condition during

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the time period in question. This evidence supports his contentions that at the time he checked the block on the retired pay application in 1975 indicating that he was not receiving Veterans compensation and for the years that he received the overpayments, he was in such poor health that it is unlikely that he knew or should have known of the overpayment, especially since his necessary medications are reported to be of the type that can bring about confusion and forgetfulness.

In view of this new evidence regarding Colonel McDonald's poor health and mental state, we now conclude that he should not be considered at fault in the matter. See generally Kurt H. Schoenberg II, B-184038, August 20, 1975; B-174531, January 5, 1972. Consequently, we find that collection of the overpayment "would be against equity and good conscience and not in the best interest of the United States." Accordingly, the claim of the United States against Colonel McDonald in the amount of \$26,004.62 is hereby waived and he is advised of his right under 10 U.S.C. § 2774(c) to file a claim with the Army within 2 years of the date of waiver for refund of any amount collected from him or refunded by him on account of this debt.

for 
Comptroller General
of the United States