



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Barry L. Wells - Indebtedness Waiver Request  
**File:** B-228828  
**Date:** March 23, 1988

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### **DIGEST**

A former Air Force enlisted member who was voluntarily discharged early received a large unexpected payment upon discharge for final pay and leave, when he knew or should have known he was in debt to the service for the unearned portion of his reenlistment bonus. He is not without fault in the matter so as to permit waiver of the final pay overpayment. Further, financial hardship alone resulting from collection is not sufficient reason for a member to retain the payment that he should have known did not belong to him.

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### **DECISION**

This is in response to an appeal of our Claims Group's action of May 15, 1980, denying a request for waiver submitted by a discharged Air Force member, Barry L. Wells, of the \$1,098.70 debt he incurred as the result of an erroneous payment he received. The erroneous payment occurred when he was given a final payment of pay and allowances at discharge which should have been set off against the unearned portion of his selective reenlistment bonus (SRB) the Air Force was required to recoup from him. In light of the facts presented, and the applicable provisions of law, we are sustaining our Claims Group's action in this matter.

### **BACKGROUND**

Mr. Wells reenlisted in the Air Force on August 16, 1974, for a 6-year term, and qualified for and was paid a selective reenlistment bonus (SRB) of \$6,688.65. On September 29, 1978, Mr. Wells was discharged from the Air Force under a voluntary early release program, having served approximately 4 years of his 6-year term of enlistment. Upon discharge, Mr. Wells received a final pay check of \$1,098.70. However, this payment was erroneous, since he owed the United States \$2,470.78 for the unearned portion of his SRB, and the payment should have been applied toward the amount owed to the government.

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In his initial request for waiver, Mr. Wells stated that during his out processing from the Air Force, an employee of the Scott Air Force Base Accounting and Finance Office told him to be sure to pick up his check before leaving. When he asked "what check," he was told that it was for leave and travel pay. He stated further that he then was told that his out processing was completed and that he assumed his pay and travel account was settled. He said he was not aware of any problem until contacted by telephone a couple of months later by an employee at Scott who told him an error had been made. That information was confirmed in a letter to him from the Air Force on February 14, 1979. Additionally, Mr. Wells pointed out that the mistake in making the erroneous payment was not his, that he accepted the check thinking that it was in order, and finally, that during his Air Force service, he acted with loyalty and honesty.

An SRB is paid for a member's commitment to perform a specified period of service, and the Air Force indicates that it was general knowledge that when a member received a voluntary early discharge, recoupment of the unearned portion of the bonus was required. In addition, we have been advised informally that Air Force reenlistment documents contained a certification required by those eligible for a reenlistment bonus that they had been advised of, understood, and agreed to the conditions which may terminate their entitlement to unpaid bonus installments and cause a portion of advance bonus payments to be recouped.

The Claims Group denied Mr. Wells' request for waiver of the \$1,098.70 erroneous payment. It agreed with the Department of the Air Force that upon early discharge, Mr. Wells reasonably should have expected recoupment of a portion of his SRB since he did not serve the full enlistment period for which the bonus was paid. Since he should not have expected to receive a substantial payment upon discharge, Mr. Wells had a duty to inquire into the matter and to retain the funds for refund to the government. Absent this action, the Claims Group concluded that Mr. Wells must be considered at least partially at fault in creating the overpayment, which statutorily precludes waiver. The appeal, in essence, is based upon a contention of financial hardship due to an overpayment which arose through no fault of the member, but from administrative error.

## ANALYSIS

Section 2774 of title 10, United States Code, provides our authority to waive certain debts of service members arising out of "erroneous" payments 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 our 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 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. George S. Winfield, B-224774, Dec. 8, 1986, 66 Comp. Gen. \_\_\_\_\_.

As is indicated above, Mr. Wells received a selective reenlistment bonus at the time he reenlisted in 1974 and under the provisions of 37 U.S.C. § 308(d) when he received a voluntary early discharge in 1978, the unearned portion of the bonus was required to be collected from him. His debt arising from the unearned portion of the bonus did not arise out of an "erroneous payment" and, therefore, is not subject to consideration for waiver under 10 U.S.C. § 2774. Eugene M. Edynak, M.D., B-200113, Feb. 13, 1981; Specialist Wayne Susumu Enomoto, B-180028, July 9, 1974. However, the final payment made to Mr. Wells for leave and pay at discharge was erroneous to the extent that it should have been set off against his debt for the unearned portion of the bonus. Thus, to the extent that his debt was not reduced by setoff, he is considered to have received an erroneous payment which may be considered for waiver under 10 U.S.C. § 2774. It is that portion of his debt that we are considering for waiver here.<sup>1/</sup>

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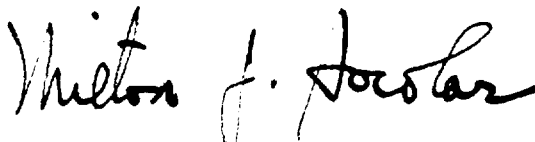
<sup>1/</sup> From the record presented to us it is not clear whether the final payment also included travel allowances which would be precluded from waiver consideration under the then existing terms of the statute, 10 U.S.C. § 2774(a) (1976). It is not necessary to pursue that matter further since, in any event, we deny waiver here.

Mr. Wells knew or should have known at the time of his discharge from the Air Force that not completing his full term of enlistment for which he had been paid the entire amount of his SRB would result in his owing the balance of the amount to the government. From his own statements it is clear that he was not expecting to receive a payment at discharge. And, had he brought the fact that he had not completed the enlistment term for which he had been paid a bonus to the attention of a responsible person at the finance office it seems very likely that the erroneous payment would not have been made. In any event, at a minimum, he should have set aside the amount until a definite determination and statement had been made to him fully explaining it.

The fact that the overpayment was made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with the overpayment. 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 in equity and good conscience to make restitution. Also, financial hardship alone, resulting from collection, is not a sufficient reason to retain a payment he should have known did not belong to him. Petty Officer Henry J. Hulbert, B-195890, Feb. 7, 1980, and cases cited therein.

In these circumstances, we are unable to conclude that Mr. Wells is free from fault, and we conclude that collection action is not against equity and good conscience nor contrary to the best interests of the United States.

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

*for*   
Comptroller General  
of the United States