



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Lieutenant Commander William P. McCarthy, USN  
(Retired) - Overpayment Upon Retirement - Waiver  
Request

File: B-229296

Date: August 17, 1988

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### DIGEST

Service member who received an excessively large final separation payment upon retirement which included a duplicate semimonthly pay and allowances payment should have known that the payment was erroneous, since it properly should have included only lump-sum leave, the approximate amount of which he knew. Since he accepted the payment without questioning it, he is not without fault in the matter so as to permit waiver of his debt.

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### DECISION

This is in response to an appeal of our Claims Group's action of July 13, 1987, denying a request for waiver submitted by a retired Navy member, Lieutenant Commander William P. McCarthy, of a \$1,456.98 overpayment received by him upon retirement. Commander McCarthy received a final separation payment of \$6,244.27 when he retired on August 31, 1983, even though he was entitled to receive only \$4,787.29. The correct amount represented 59 days lump-sum leave and related allowances. Both the Department of the Navy and our Claims Group denied waiver. In light of the facts presented and the applicable provisions of law, we sustain the denial of waiver.

Commander McCarthy states that he was scheduled to retire on July 1, 1983, and in connection with his retirement processing he was shown a check by the disbursing clerk on June 29, 1983, in an amount of approximately \$5,800. He was extended on active duty, however, through August 31, 1983, rather than being retired on July 1. His regular pay was continued in connection with his retention on active duty, including payment to him of \$1,457 for the latter part of June 1983. Upon his retirement on August 31, he was paid a lump-sum payment which erroneously included the \$1,457 which he had already received for the latter part of June.

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Commander McCarthy contends that he was unaware that an overpayment had taken place. When he received the erroneous payment of \$6,244.27 on August 31, 1983, he believed the increase was normal. He also contends that conflicts concerning his retirement date placed him in an unsettled situation. In requesting reconsideration, he maintains that he has no responsibility for the overpayment.

Section 2774 of title 10, United States Code, provides statutory authority to waive claims of the United States against service members if the collection "would be against equity and good conscience and not in the best interest of the United States." Section 2774(b) precludes the Comptroller General from waiving a claim if there is "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. Barry L. Wells, B-228828, Mar. 23, 1988.

In the present situation, the record indicates that Commander McCarthy's normal pay during 1983 had been at a constant level, with few variations, and his pay continued through his retirement date, including a regular payment of \$1,490 on August 30, 1983. Therefore, Commander McCarthy should have known he was entitled to only his lump-sum leave pay when he retired on August 31, 1983. He should have questioned why his separation payment was greater than the separation payment he knew he would have received on June 30 when his leave balance was exactly the same, i.e., 59 days.

We have held that responsible members of the service are expected to know approximately what their correct leave balance should be and the amount of pay due them upon retirement. See John J. Carson, Jr., B-184514, Sept. 10, 1975. We find that Commander McCarthy could not have reasonably expected a lump-sum payment of \$6,244.27, in addition to his normal pay of \$1,490 which he received the day before he retired. In our view, the lump-sum payment was so large that he should have pursued the matter and at least inquired into the amount. His failure to do so constitutes "fault" under 10 U.S.C. § 2774.

Accordingly, the action taken by our Claims Division in denying waiver is sustained.

*for* *Wilton F. Dowler*  
Comptroller General  
of the United States