



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Andrew J. Jossis

**File:** B-236270

**Date:** January 26, 1990

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### DIGEST

A discharged service member's request for waiver of his debt arising because of failure to liquidate advance payments made to him may not be considered for waiver under 10 U.S.C. § 2774 since only erroneous payments may be considered under that statute and these payments were valid when made. Resuming regular payments prior to liquidation of the advance does not change the regular payments or the advance into erroneous payments.

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### DECISION

Andrew J. Jossis requests reconsideration of his application for waiver of an indebtedness of \$727.67 claimed by the U.S. Navy for overpayments resulting from uncollected advance payments. His request for waiver was denied by our Claims Group. We uphold that denial on the following basis.

Mr. Jossis was advanced nine payments in August 1982 totaling \$4,266, representing pay and allowances for a 4-month period August 15, 1982, through December 15, 1982. The record is silent as to why the advances were made. He did not receive any pay until November 12, 1982, when he began receiving regular pay. He should not have received his regular pay until the end of December 1982 when his advance would have been fully liquidated. The Navy contends that as a result the regular payments he received prior to the liquidation of the advance were erroneous. A short time prior to his separation it was determined that he owed the government \$1,176. This debt was partially liquidated leaving an indebtedness of \$727.67 at the time of his discharge, July 29, 1983. On February 20, 1984, the Navy notified him of the indebtedness. The former member claims that he believed the debt had been offset against amounts owed him since he received only travel pay at his separation.

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Section 1006 of title 37, United States Code, provides that advance payments may be made to members of the uniformed services in certain circumstances. A member may be advanced up to 3 months pay in connection with a permanent change of station. Additionally, a member who is on duty at a station where pay cannot be disbursed regularly may be paid in advance.

These advance payments are valid when made. If they are not set off against future payments, an indebtedness will arise. Failure to set off the advance payments does not change their character from valid to erroneous. In addition, regular payments made prior to liquidation of the advance are not erroneous. Darrell N. Kerby, B-190770, Mar. 8, 1978. An exception to this latter rule occurs when a member receives his final pay at discharge with no set off for prior unliquidated advance payments. This final payment is considered erroneous to the extent that available amounts were not set off. Darrell N. Kirby, supra.

Section 2774 of title 10, United States Code, provides authority for the waiver of claims arising out of erroneous payments of pay and allowances made to or on behalf of members or former members of the uniformed services. However, payments which are valid when made, such as advance payments, are not erroneous payments for the purposes of waiver under 10 U.S.C. § 2774. This is the case even though a member may be indebted as a result of circumstances occurring later.

Mr. Jossis's indebtedness arose as a result of a failure to liquidate the advance payments to him. These were valid payments when made and were not erroneous. The fact that his regular pay resumed prior to liquidation of the indebtedness does not make the regular pay erroneous. He was not overpaid at the time of his discharge since the full amount available for set off was taken at that time. He received only travel entitlements when he was discharged, which are not subject to set off.

Accordingly, in the absence of a showing by either Mr. Jossis or the Navy that the advance payments were erroneous, Mr. Jossis's indebtedness may not be considered for waiver under 10 U.S.C. § 2774. The settlement of our Claims Group is sustained.

*for*   
Comptroller General  
of the United States