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DECISION



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

FILE: B-196261

DATE: November 14, 1979

MATTER OF: Leon R. Pollick

[Request For Waiver of Debt Resulting From]

DIGEST: Considering the amount of the overpayments, a service member who received erroneous payments of separate rations while using Government mess should have known that he was receiving excess payments, and that he would be required to refund them. Therefore, he is not without fault in the matter so as to permit waiver of his debt. Further, financial hardship, alone, resulting from collection is not sufficient reason for a member to retain the payments that he should have known did not belong to him.

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Mr. Leon R. Pollick requests reconsideration of our Claims Division's June 19, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$617.32. The debt arose from erroneous payments of separate rations (basic allowance for subsistence) made to him incident to his service in the United States Navy during the period October 1975 through June 1976. The denial of waiver is sustained.

While serving as a petty officer in the Navy, Mr. Pollick through disbursing error was paid separate rations from October 1, 1975, through March 29, 1976, and from April 29, 1976, through June 30, 1976, because entitlement to separate rations was erroneously entered on his pay record beginning in October 1975. He was not entitled to separate rations during that period because he had not been granted permission to mess separately and a Government messhall was available to him. 37 U.S.C. 402 (1976).

Mr. Pollick, in his original request for waiver, contended that he did not know or suspect that he was being overpaid due to receiving a Navy-wide pay raise in October 1975, as well as being advanced in grade and having over 3 years' service in 1976. Further, he stated that the error was not due to fault on his part, and payment would result in extreme financial hardship. In his appeal, he also contends in essence that he had never applied for separate rations and that waiver should be granted because the excess payment was due to administrative error.

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Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts 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 the opinion of the Comptroller General—

"* * * 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. See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, Mr. Pollick was entitled only to a basic pay increase of \$21 per month due to the military pay raise effective October 1, 1975. In addition to the raise in basic pay he began receiving the erroneous rations payments of \$2.53 per day (over \$75 per month) effective in October 1975. The additional basic pay increase he received in 1976 did not affect his entitlement at that time. Therefore, when he began to receive the erroneous payments in October he should have questioned the accuracy of his pay since it increased significantly more than he could reasonably have expected that he was entitled to receive. Considering the amount of the overpayment, it appears that he should have known that he was continuing to be overpaid and would eventually be required to repay the erroneous amounts. He should have inquired as to the correctness of the payments and set aside these excessive amounts until a definite determination and statement had been made to him fully explaining his entitlement.

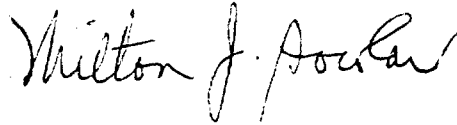
The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments.

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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. See decisions B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein. Also, financial hardship alone, resulting from collection, is not a sufficient reason to retain the payments he should have known did not belong to him. B-183460, May 28, 1975; B-192380, November 8, 1978.

Since Mr. Pollick had a duty and legal obligation to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected, we are unable to conclude that he is free from fault, and 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 Division denying waiver is sustained.



For the Comptroller General
of the United States