J. Maguire
149303

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Chief Radioman Gregory J. Groh, USN (Retired)

File: B-252053

Date: May 14, 1993

DIGEST

Former member of the Navy who received a direct deposit payment for active duty pay and allowances 2 weeks after his separation from the Navy should have known that the payment was erroneous since member knew he had already received all active duty pay owed to him, and because his credit union statement indicated that the payment was for active duty pay. Also, the payment was for the same amount he had previously been receiving as his "mid-month" active duty pay. Denial of his request for waiver of the amount owed is affirmed.

DECISION

This action is in response to a request from Chief Radioman (RMC) Gregory J. Groh for reconsideration of his request for waiver of $1,309.35 which was the result of an erroneous Direct Deposit System (DDS) payment made to him after he had retired from the Navy. For the reasons stated, we deny his request.

RMC Groh retired from the Navy on January 31, 1991. At the time of his retirement, he received an "end-of-the-month" DDS payment of $1331.82, his final pay for active duty. In addition, the following day he received a final separation payment of just over $200, covering 3 days of lump sum leave and other items, which served to settle his active pay account. However, on February 15, 1991, 2 weeks after he retired, a "mid-month" DDS payment in the amount of $1309.35 for active duty was deposited in his account, the same amount as the "mid-month" pay and allowance which he had received while on active duty in January 1991.

RMC Groh was notified of the overpayment by letter dated November 21, 1991. He repaid $649.70 of the debt in a lump sum payment and requested waiver of the entire overpayment, including the amount he had repaid. The Navy denied the request. On appeal, our Claims Group denied waiver of the $1309.35. The matter was then forwarded to this Office.

Mr. Groh states that his credit union made a number of errors in distributing his retired pay to his various credit union accounts from the time of his retirement through July of 1991. He states there were a number of transactions among his accounts during that period which reflected those problems and, because his attention was "riveted" on sorting out the retired pay problems, he did not notice the active duty payment. However, he does acknowledge that his credit union statement for February 1991 shows a deposit of $1309.35, and that the statement identifies it as pay for active duty. He points out that the error was made by the Navy, through no fault of his own.

He also notes that he retired in Scotland but later had to return unexpectedly to the United States, paying all travel expenses himself, and saving the Navy what it would have paid him to relocate to the U.S., had he chosen to retire in the U.S. He states that payment of the debt would create a hardship to his family.

We have long held that the waiver statute does not apply automatically to relieve the debts of all members who, through no fault of their own, have received erroneous payments from the government. Waiver action under 10 U.S.C. § 2774 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. If it were merely a matter of right, then virtually all erroneous payments made by the government to service members would be excused from repayment.

The waiver statute, 10 U.S.C. § 2774, provides that the Comptroller General may waive a claim of the United States arising out of an erroneous payment to a service member if collection would be against equity and good conscience and not be in the best interest of the United States. This authority may not be exercised if there exists in connection with the claim, any indication of fraud misrepresentation, fault or lack of good faith on the part of the member.

We consider "fault" to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard used is whether a reasonable person should have been aware that he or she was receiving payment in excess of the proper entitlement.

We have held that a member who received an erroneous payment is not without "fault" when he fails to question an erroneous payment when that payment was indicated on his credit union statement. Timothy R. Snelling, B-243882, Oct. 11, 1991.

In the present case, although RMC Groh may have been focused on problems regarding his retired pay, it is our view that he should nonetheless have known that he was overpaid for his active duty. He acknowledges that the credit union statement identified the payment, deposited in his account after his separation, as active duty pay. In addition, the amount of the payment was exactly the same amount as his previous mid-month active duty pay. Finally, RMC Groh knew he had been paid all active duty pay due him at the time of retirement. Thus, RMC Groh should have known that he had received an erroneous payment and should have taken action to have the matter corrected. Since he did not, we cannot say he is without "fault" in the matter and thus waiver is not appropriate.

While RMC Groh may argue that he saved the Navy relocation expenses it would have incurred had he chosen to retire in the U.S., this possible savings to the Navy on an unrelated matter is not relevant to his waiver request, and does not provide a basis upon which we may allow waiver of the overpayment. Nor does the financial hardship RMC Groh states would be caused by collecting the debt constitute a factor we may properly consider in determining whether an individual is without "fault" and eligible for waiver. Daniel N. Koharski, B-244882, Nov. 15, 1991.

Accordingly, we find that denial of the request for waiver was proper.

for Seymour Efros

James F. Hinchman
General Counsel