



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

092182

30918

B-172885

May 15, 1973

The Commandant of the Marine Corps  
Department of the Navy  
United States Marine Corps  
Washington, D.C. 20380

Dear Sir:

Further reference is made to our letter dated February 28, 1973, requesting a report concerning the propriety of waiving the claim of the United States in the amount of \$618.44 against Mr. James A. Wentz, 220 90 63, a former member of the United States Marine Corps, under the provisions of Public Law 92-453, October 2, 1972, 86 Stat. 758, which amended title 10, U.S. Code by adding section 2774.

In your report it is indicated that a monthly allotment deduction of \$36 from his pay was authorized in September 1967. The allotment was payable to the Jacksonville Navy Federal Credit Union, Jacksonville, Florida, commencing November 1967, and an appropriate entry was made in his pay record. However, it became necessary to open a new pay record for Mr. Wentz in October 1967 and the \$36 allotment deduction was erroneously omitted. Payments to the credit union commenced in November 1967 and continued through March 1969 without deduction from his pay.

In April 1969 you say an allotment reconciliation audit established that deductions had not been made for the period November 1967 through December 1968. A pay adjustment authorization was issued on April 3, 1969, to charge Mr. Wentz' pay record \$504 for the period November 1967 through December 1968, and the authorization also directed the disbursing officer to adjust the pay record opened January 1, 1969, if the same error had occurred on that pay record. It is reported that the directed actions were not taken, nor was Mr. Wentz informed of the indebtedness since he had been separated from the service on February 15, 1969.

It is stated that the error was again detected during a post-separation review of Mr. Wentz' pay account in May 1970. An "Advice of Indebtedness" was prepared on May 27, 1970, indicating he had been overpaid by \$612 by reason of the payment of the

[Propriety of Waiving U.S. Claim Against Former Marine]

BEST DOCUMENT AVAILABLE

7/15/73

\$36 allotment without pay record deductions for the period November 1967 through March 1969. It is stated that Mr. Wentz was informed of the indebtedness by letter dated June 29, 1970.

A subsequent review of his pay account in May 1971, revealed that he had been overpaid clothing maintenance allowance during the period December 29 through 31, 1968. The allowance was erroneously extended as \$6.90, whereas he should have been credited 46 cents, resulting in an overcredit of \$6.44, which when added to the previous indebtedness resulted in an indebtedness of \$618.44.

In the report it is indicated that an analysis of Mr. Wentz' pay records, in the opinion of the Marine Corps, does not show fault or lack of good faith on his part. In fact, it is pointed out that it is understandable why the allotment payment error was not detected by the member since various transactions occurred affecting his pay during the critical period of September 1967 through December 1967 when the allotment payments began.

We do not disagree with this view. However, section 2774(b)(2) of title 10, provides that the Comptroller General or Secretary concerned, may not exercise his authority under this section to waive any claim, if application for waiver is received in his office after the expiration of the three years following the date on which the erroneous payment of pay or allowances was discovered.

It is our view that the three-year limitation period prescribed in 10 U.S.C. 2774(b)(2) must be considered as beginning to run from the date the erroneous payment "was discovered" by the administrative office. That is, from the date it is first definitely determined by an appropriate official that an erroneous payment had been made. The date of notice to the member is not relevant in fixing such date.

Therefore, since it is indicated that the error with regard to the failure to make allotment deductions for the period November 1967 through December 1968 was detected on April 3, 1969, in the amount of \$504, we are precluded from considering that portion of the claim, since application for waiver was not received in this Office until February 12, 1973, three years and 10 months after the discovery of the erroneous payments. Also, the date of discovery was more than three years prior to enactment of Public Law 92-453.

Since the errors with regard to the allotment deductions for January 1969 through March 1969 were not definitely determined to be erroneous until May of 1970 and the Clothing Maintenance Allowance

overpayment was not discovered until May of 1971, these overpayments fall within the three-year limitation and are for consideration under the provisions of 10 U.S.C. 2774.

We note that the Department of the Navy in a report dated August 25, 1971, to the Chairman, House Judiciary Committee on H.R. 7826, 92d Congress, a bill for the relief of Mr. Wentz, indicated that the nature of the overpayments appears to have been such that the error was reasonably detectable by Mr. Wentz. This report also indicated that it would have been reasonable to conclude that the fact that the allotment did not cause a corresponding take home pay reduction should have put Mr. Wentz on notice of the error.

Therefore, it appears that the Navy report and the Marine Corps report are not entirely consistent, creating some doubt in the matter. However, since the Navy report was made prior to the enactment of the waiver law and since the Marine Corps report is more recent and detailed, we will accept the view expressed in that report that Mr. Wentz could not reasonably have been expected to know of the erroneous payments.

Accordingly, under the authority of 10 U.S.C. 2774, and in view of the facts and circumstances in this case, indicating no fault on the part of Mr. Wentz, we hereby waive \$114.44 of the total claim in the amount of \$618.44 of the United States against him. His indebtedness to the United States is now \$504.

We request that you advise Mr. Wentz of this action.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States

BEST DOCUMENT AVAILABLE