

Kramer
15765

DECISION



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

[Request For Waiver of Indebtedness]

FILE: B-199119

DATE: December 30, 1980

MATTER OF: Petty Officer Richard E. Pittman, USN

DIGEST: Service member erroneously received BAQ at the with dependent rate while he and his dependents occupied Government quarters as the result of an administrative error which occurred when member's pay account was converted to a computerized system (JUMPS). Although the member questioned the accuracy of his pay during the period of overpayment, waiver of the debt may not be granted since he regularly received leave and earnings statements which plainly showed that he was receiving BAQ. Also, he failed to disclose to disbursing personnel when he questioned the accuracy of his pay that he and his dependents were residing in Government quarters.

Petty Officer Richard E. Pittman, USN, requested reconsideration of our Claims Division's denial of his application for waiver of the claim of the United States against him resulting from erroneous payments made to him of a basic allowance for quarters at the with dependent rate during the period July 1, 1976, through July 11, 1977. For the following reasons the claim against Petty Officer Pittman may not be waived and the action taken by our Claims Division is sustained.

On August 5, 1975, while stationed in Norfolk, Virginia, Petty Officer Pittman and his dependents were assigned to Government quarters. As a result of this assignment he lost his entitlement to receive a basic allowance for quarters. 37 U.S.C. 403(b) (1976). In June 1976, Petty Officer Pittman's pay account was converted to the computerized Joint Uniform Military Pay System (JUMPS). At the time of conversion the disbursing office which maintained his pay records failed to indicate on the conversion document that Petty Officer Pittman was residing

~~0139777~~ 114054

B-199119

in Government quarters. This error was not detected and on July 1, 1976, he began to receive basic allowance for quarters (BAQ) at the with dependent rate. Payments of BAQ at the with dependent rate were reflected on his leave and earnings statements.

Subsequently, Petty Officer Pittman, was transferred to the Naval Station, Guantanamo Bay, Cuba, where he and his dependents were also assigned Government quarters. While stationed there Petty Officer Pittman received a large payment on November 30, 1977, which he promptly returned. He asked why he had received such a large payment and was later informed that it was the result of an error which was made when his pay record was converted to JUMPS. After disbursing personnel at Guantanamo Bay investigated this error further they discovered that Petty Officer Pittman had erroneously been paid BAQ at the with dependent rate while his family resided in Government quarters.

Petty Officer Pittman, in his request for waiver, states that he never knew or suspected that he was being overpaid. He states that when he received Government housing in Norfolk he was deployed in the Mediterranean. A month later the paperwork caught up with him and 2 months' BAQ was deducted from his pay since his family had already been living in Government housing. He states that since then every time his pay has deviated more than \$10 from his normal pay, he has gone to the disbursing office to discover the reason and to discover how his pay was computed.

The report from the Navy Finance Center states that there is no indication of fraud, misrepresentation or lack of good faith on the part of Petty Officer Pittman. In their opinion, however, he was at least partially at fault since during the period of overpayment his leave and earnings statements indicated that he was receiving

B-199119

BAQ at the with dependent rate while his dependents were living in Government quarters. Thus, he should have brought this to the attention of his disbursing officer and obtained a pay breakdown.

Subsection 2774(a) of title 10, United States Code (1976), provides that the Comptroller General may waive in whole or in part a claim of the United States against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, if its collection would be against equity and good conscience and not in the best interest of the United States. Subsection 2774(b) further provides that the claim may not be waived if in the opinion of the Comptroller General there exists an indication of fraud, misrepresentation, fault or lack of good faith on the part of the claimant.

"Fault," as used in this statute has been interpreted as including something more than a proven overt act or omission by the claimant. It is considered to exist if in light of all the facts it is determined that the claimant should have been aware that he was receiving payments in excess of his proper entitlements. See B-194233, September 12, 1979, and B-191757, July 24, 1978.

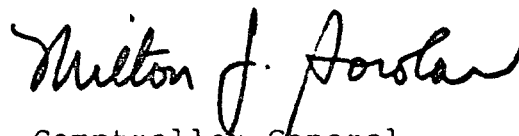
In the present situation, the action of Petty Officer Pittman in questioning the appropriate Navy disbursing office about his pay every time it fluctuated indicates an effort on his part to determine the accuracy of his pay. However, even though his pay may have fluctuated during the period of overpayment as a result of receiving advance pay and other entitlement changes the fact remains that beginning in August 1976 he received leave and earnings statements which plainly indicated that he was receiving BAQ at the with dependent rate. In this regard, we have held that a person is at least partially at fault for his failure to examine a leave and earnings statement furnished him which, had it been examined, would have alerted the recipient to the fact that erroneous payments were being made. B-197513, September 24, 1980. Moreover,

B-199119

although Petty Officer Pittman may have checked with disbursing personnel every time his pay fluctuated, the record indicates that he did not inform disbursing personnel until November 1977 that he and his family were residing in Government quarters.

Petty Officer Pittman should have known upon receipt of his leave and earnings statements that he was receiving payment for BAQ at the with dependent rate to which he was not entitled. Such knowledge on his part carried with it a duty and obligation to bring that error to the attention of appropriate officials and set aside these amounts for refund at such time as the accounting error was corrected. See B-191757, July 24, 1978. Since he did not do so it is our view that he is not free from fault and collection action is not against equity and good conscience nor contrary to the best interests of the United States. Moreover, financial hardship alone, resulting from collection, is not sufficient to retain the payment he should have known did not belong to him. B-197513, September 24, 1980.

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



Acting Comptroller General
of the United States