

**DECISION**

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

*8/18/78*

FILE: B-192611

DATE: November 3, 1978

MATTER OF: Chief Petty Officer Robert Frasure, USN

**DIGEST:** Service member moved into Government quarters, terminating entitlement to basic allowance for quarters (BAQ). Due to payroll error, member continued to receive BAQ for 7 months. Because member failed to inquire as to correctness of pay, it cannot be held that he was without fault in matter so as to permit waiver of erroneous payments of BAQ.

This action is in response to a letter dated July 18, 1978, from Chief Petty Officer Robert Frasure, USN, appealing the determination of our Claims Division denying waiver of his indebtedness to the United States arising from erroneous payments of basic allowance for quarters (BAQ).

The facts, as set forth in our Claims Division letter dated June 29, 1978, are that Chief Frasure's entitlement to BAQ should have terminated when he began occupying Government quarters on July 7, 1975. It appears that he completed the proper documents to terminate BAQ but that his pay records were not properly adjusted because the documents were misplaced. As a result, Chief Frasure was erroneously paid BAQ at the rate of \$170.40 per month from July 7 through September 30, 1975, and at the rate of \$178.80 per month from October 1, 1975, through March 15, 1976, resulting in an overpayment in the amount of \$1,460.52. The error was discovered during an administrative audit of pay records.

The Claims Division denied Chief Frasure's request for waiver on the ground that the termination of BAQ should have caused his pay to decrease by \$170.40 per month and that this amount was sufficiently large so that the failure to deduct should have been readily apparent. On appeal Chief Frasure restates his original argument that he did not know or suspect he was being overpaid, and he points out that repayment of the indebtedness will result in financial hardship due to the discontinuance of submarine pay and other circumstances.

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Under the authority of 10 U.S.C. § 2774 (1976) a claim arising out of erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services may be waived if collection would be against equity and good conscience and not in the best interest of the United States. This authority may not be exercised if there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim. 10 U.S.C. § 2774(b)(1).

The word fault, as used in 10 U.S.C. § 2774, has been interpreted as including something more than a proven overt act or omission by the member. Thus, we have considered fault to exist if under the circumstances it is determined that the member should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements. See Paul G. Kiewert, B-185535, April 21, 1976; and John J. Carson, Jr., B-184514, September 10, 1975.

In the present case, the termination of BAQ should have caused Chief Frasure's pay to decrease by \$170.40 per month, a substantial portion of his total pay, and the absence of such a decrease in pay should have been readily apparent. Furthermore, we have consistently held that where a member knows or should have known of the erroneous payments he is obligated to promptly bring the matter to the attention of the appropriate officials and to retain the excess amounts for subsequent refund to the Government. See Steven M. Zundell, B-191757, July 24, 1978, and decisions cited therein. If the member fails to do so, it cannot be said that he was without fault in this matter and the claim may not be waived. Finally, the fact that the member may incur some financial hardship in repaying the debt is not sufficient for our Office to authorize waiver.

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

*R. F. Keller*  
Deputy Comptroller General  
of the United States



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

*M. Volpe*  
*PLM I*

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November 3, 1978

The Honorable Lou Frey, Jr.  
House of Representatives

Dear Mr. Frey:

Further reference is made to your inquiry dated July 24, 1978, concerning the appeal of Chief Petty Officer Robert Frasure from our Claims Division determination denying waiver of erroneous payments of basic allowance for quarters.

By decision of today, B-192611 (copy enclosed), we have sustained our Claims Division determination denying waiver since it cannot be said that under the circumstances the member was without fault in this matter. The correspondence which you enclosed with your inquiry is returned at your request.

Sincerely yours,

Deputy

*R. M. Keenan*  
Comptroller General  
of the United States

Enclosures