



## Decision

**Matter of:** Elizabeth G. Thompson - Waiver Request

**File:** B-255988

**Date:** May 31, 1994

### **DIGEST**

A former Army member's request for waiver under, 10 U.S.C. § 2774, of her debt to the United States that arose when an extra paycheck was issued after her separation from the service and automatically deposited in her bank account is denied, because individual was not without fault in the matter, which bars waiver.

### **DECISION**

This responds to an appeal of a Claims Group settlement that partially waived the collection of erroneous payments made to Elizabeth G. Thompson after her separation from the Army. We affirm the settlement.

Ms. Thompson was separated from the Army on October 4, 1991. At that time Ms. Thompson was entitled to pay and allowances for 4 days plus 6 days of accrued leave. While Ms. Thompson was actually entitled to \$715.08, a check was prepared for her in the amount of \$1,168.20, resulting in an overpayment of \$453.12. Ms. Thompson states that she had asked to have the check sent to her, but did not receive it until at least mid-November 1991. On October 15, 1991, a direct deposit was made to Ms. Thompson's bank account in the amount of \$1,171, the regular amount she had been receiving as mid-month pay. The Claims Group waived collection of the overpayment of \$453.12, but denied waiver of the \$1,171 erroneously deposited in Ms. Thompson's bank account.

Under 10 U.S.C. § 2774, the Comptroller General may waive collection of erroneous payments of pay and allowances made to members or former members of the uniformed services if collection would be against equity and good conscience and not in the best interest of the United States. Further, waiver can only be granted if it is shown that the claim arose because of an administrative error, with no indication of fraud, fault, misrepresentation, or lack of good faith by the member or any other person in accepting the overpayment.

The standard we employ in determining whether a member is at fault in accepting an overpayment is whether, under the

particular circumstances involved, a reasonable person would have been aware that she was receiving more than her proper entitlement. MS1 Johnny Singletary, USN (Retired), B-254328, Nov. 17, 1993.

Ms. Thompson should have questioned the October 15 deposit to her bank account. While Ms. Thompson had not received the final check that was due her, she had requested that it be sent to her home. In our view, when a direct deposit was made to Ms. Thompson's bank account on the mid-month payday in the same amount she had been receiving as mid-month pay, she should have been aware that the payment might be erroneous and should have contacted the disbursing office at Fort Stewart to ascertain whether the payment was correct. When Ms. Thompson received a check for \$1,168.20 in November 1991, she had further reason to question the amount she had received in October. Since Ms. Thompson did not question the payment she received in October 1991, she is not without fault, and her debt cannot be waived.

The Claims Group's settlement is affirmed.

/s/ Seymour Efros  
for Robert P. Murphy  
Acting General Counsel

**To:** Director, Claims Group/GGD - Sharon S. Green

**From:** Acting General Counsel - Robert P. Murphy

**Subject:** Elizabeth G. Thompson - Waiver Request Z-2925469  
(B-255988)

Attached is your file Z-2925469 along with a copy of our  
decision affirming your settlement.

**Attachments**