



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

30933

B-177994

May 18, 1973

The Honorable Robert F. Froehke
The Secretary of the Army

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Dear Mr. Secretary:

This is in further reference to our letter dated March 12, 1973, requesting a report from the Department of the Army concerning the propriety of waiving the claim of the United States in the amount of \$4,975.33 against Colonel Felix R. Moss, United States Army, under the provisions of Public Law 92-453, October 2, 1972, 86 Stat. 759, which amended title 10, U.S. Code, by adding section 2774. The claim arose as a result of overpayments of basic allowance for quarters for the period October 6, 1969, through December 31, 1971, and station housing allowance for the period September 18, 1971, through December 31, 1971, to which he was not entitled since he was assigned to Government quarters for that period of time.

Section 2774(a) as added by the above-mentioned act provides that a claim of the United States against a person arising out of an erroneous payment of pay or allowance, other than travel or transportation allowances, to or on behalf of a member or former member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part. If the claim is in an amount aggregating not more than \$500 the Secretary of the service concerned or the Comptroller General is vested with the authority to waive the claim of the United States. Claims aggregating more than \$500 may be waived only by the Comptroller General.

Section (b) of 10 U.S.C. 2774 provides that the Comptroller General or the Secretary concerned may not exercise his waiver authority if in his opinion there exists in connection with the claim any indication of fraud, misrepresentation, fault, lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

The Standards for Waiver promulgated pursuant to the act provide in part that any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. See 4 C.F.R. 91.5(c).

Request for Waiver of Indebtedness

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Pursuant to the Standards for Waiver, we requested that your Department furnish us a report concerning the propriety of waiver of Colonel Moss' indebtedness. It was reported that there is nothing in the records to indicate any fraud on the part of the officer or any other person interested in obtaining a waiver of this claim. However, it was reported that it would appear reasonable to assume that Colonel Moss would have recognized that there would be no entitlement to basic allowance for quarters or station housing allowance while he and his dependents were occupying Government quarters. We are in accord with this view that Colonel Moss should have been aware of the erroneous monthly payments of quarters allowance and station housing allowance, since he and his dependents were occupying Government quarters for which he incurred no personal expense.

Therefore, it is our view that collection action in Colonel Moss' case would not be against equity and good conscience since it appears that he was not without fault and should have realized he was receiving allowances to which he was not entitled by virtue of his occupancy of Government quarters. Accordingly, waiver of his indebtedness under the act of October 2, 1972, is hereby denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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