



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-247983

August 7, 1992

Mr. Robert A. Oderkirk
Ser 2073N/36
Naval Underwater Systems Center
Newport, RI 02841-5047

Dear Mr. Oderkirk:

This responds to your February 3, 1992, appeal of our Claims Group's settlement Z-2915742, transmitted here by the Defense Finance and Accounting Service, which denied your request for waiver of overpayment of pay in the amount of \$656. The overpayment resulted from your agency erroneously issuing a Standard Form 50 returning you to duty in your civilian position prior to your release from active duty in the Naval Reserve to which you had been called incident to Operation Desert Storm.

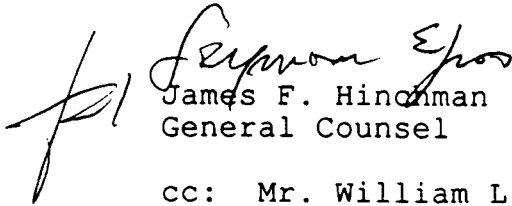
Upon review of the record, we find no error of law or fact in the Claims Group's action under the waiver authority provided in 5 U.S.C. § 5584. Accordingly, that settlement is affirmed.

We note, however, that you also request that your appeal be considered under section 8138 of Pub. L. 102-172, November 26, 1991, 105 Stat. 1150 at 1212, the 1992 appropriations act for the Department of Defense. This provision authorizes the Secretary of Defense, when he considers it to be in the best interest of the United States, to cancel the indebtedness, up to \$2,500, of any member or former member of the uniformed services if the indebtedness, as determined by the Secretary, was incurred in connection with Operation Desert Shield/Storm. The authority of the Secretary of Defense to cancel an indebtedness under section 8138 is independent of and separate from our authority to grant waiver, pursuant to which our Claims Group denied waiver, and we have no authority under section 8138. Lieutenant Commander Michael E. Schwartz, B-245773, May 14, 1992. Accordingly, your request for cancellation of your debt under section 8138 is for consideration by the Secretary of Defense. We understand that such requests should be submitted via the Defense Finance and Accounting Service, Washington Center, Washington, D.C. 20376-5001.

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By copy of this letter, we are advising the Finance and Accounting Service of our affirmance of the Claims Group's action under 5 U.S.C. § 5584 denying your request for waiver, and we assume they will proceed to consider your request for cancellation under section 8138. We suggest you contact the Washington Center directly regarding their consideration of your request under section 8138.

Sincerely yours,


James F. Hinchman
General Counsel

cc: Mr. William L. Elwell
Director, Civilian Pay and
Travel Division
Defense Finance & Accounting Service
Washington Center
Washington, DC 20376-5001

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DIGESTS

1. Where an agency's prompt notification of an overpayment of pay to an employee precludes him from relying on the accuracy of the payment to his detriment, waiver under 5 U.S.C. § 5584 is inappropriate since collection of the payment would not be against equity and good conscience despite the absence of fault on the part of the employee.

2. Section 8138, Pub. L. 102-172, Nov. 26, 1991, the 1992 Appropriations Act for the Department of Defense, which authorizes the Secretary of Defense to cancel the indebtedness, up to \$2,500 of any member or former member of the uniformed services, if the debt was incurred in connection with Operation Desert Shield/Storm, is independent of and separate from the Comptroller General's authority to grant waiver under 5 U.S.C. § 5584. Requests for cancellation of debts under section 8138 are for consideration by the Department of Defense.