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B-184947, Mar 21, 1978

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1. CERTAIN CIVILIAN MARINE PERSONNEL WERE ERRONEOUSLY PAID IN EXCESS OF GRADE GS-18 LEVEL PRIOR TO GAO DECISION IN MARINE OFFICERS, 56 COMP.GEN. 870 (1977). OVERPAYMENTS BETWEEN 1975 AND 1977 WHICH CAN BE IDENTIFIED BY AMOUNT AND INDIVIDUAL MAY BE WAIVED UNDER 5 U.S.C. SEC. 5584. AS FOR OVERPAYMENTS PRIOR TO 1975 TO UNKNOWN INDIVIDUALS AND IN UNKNOWN AMOUNTS, COLLECTION ACTION MAY BE TERMINATED UNDER FEDERAL CLAIMS COLLECTION ACT, 31 U.S.C. SECS. 951-953, SINCE COST OF COLLECTION WOULD EXCEED AMOUNT OF RECOVERY. 2. DISBURSING OFFICERS WHO MADE OVERPAYMENTS TO CIVILIAN MARINE PERSONNEL ARE RELIEVED OF LIABILITY UNDER 31 U.S.C. SEC. 82A-2 SINCE THE PAYMENTS WERE NOT DUE TO BAD FAITH OR LACK OF DUE CARE BY DISBURSING OFFICERS.

MARINE OFFICERS - WAIVER OF ERRONEOUS OVERPAYMENTS OF PAY:

THIS ACTION IS IN RESPONSE TO A REQUEST FOR AN ADVANCE DECISION FROM L.G. BUTTS, COMPTROLLER, MILITARY SEALIFT COMMAND, DEPARTMENT OF THE NAVY, REFERENCE: SER 1029M-54, CONCERNING ERRONEOUS OVERPAYMENTS OF PAY TO CERTAIN CIVILIAN MARINE PERSONNEL WHO WERE PAID IN EXCESS OF THE LIMITATION SET FORTH IN 5 U.S.C. SEC. 5363 (1976).

THE RECORD INDICATES THAT UNTIL AUGUST 1977, THE MILITARY SEALIFT COMMAND ADJUSTED ITS CIVILIAN MARINE PAY RATES TO BE CONSISTENT WITH THE PREVAILING MARITIME PAY RATES IN THE PUBLIC SECTOR. HOWEVER, OUR OFFICE HELD IN MARINE OFFICERS, 56 COMP.GEN. 870 (1977), THAT THE PAY OF CREWS OF VESSELS SET UNDER 5 U.S.C. SEC. 5348 (1976) IS SUBJECT TO THE CEILING OF GRADE GS-18 AS PROVIDED UNDER 5 U.S.C. SEC. 5363 (1976). THE ADMINISTRATIVE REPORT INDICATES THAT THE OVERPAYMENTS OF PAY WHICH OCCURRED PRIOR TO IMPLEMENTATION OF OUR MARINE OFFICERS DECISION WERE THE RESULT OF AN ADMINISTRATIVE ERROR. FURTHERMORE, THE REPORT STATES THAT THERE IS NO INDICATION OF FRAUD, MISREPRESENTATION, FAULT, OR LACK OF GOOD FAITH ON THE PART OF THE EMPLOYEES.

IN A SUPPLEMENTAL REPORT THE MILITARY SEALIFT COMMAND STATES THAT DUE TO AN ABSENCE OF PERTINENT RECORDS IT IS UNABLE TO ASCERTAIN THE ACTUAL AMOUNTS PAID TO EACH EMPLOYEE IN EXCESS OF THE LIMITATION SET FORTH IN 5 U.S.C. SEC. 5363. HOWEVER, THE REPORT DOES INDICATE THAT THE FOLLOWING INDIVIDUALS RECEIVED ERRONEOUS OVERPAYMENTS OF PAY DURING THE PERIOD FROM 1975 TO AUGUST 1977:

NAME PERIOD CY ESTIMATED AMOUNT OF

OVERPAYMENT

JAMES O'HALLORAN 1975-AUG. 1977 $16,700 R.L. RHODES " " 7,500 R.C. SANDQUIST " "

10,900 H.A. SLUSHER " " 1,700 W.E. KASPRZYK " " 7,200 E. KRUELL " " 8,100 P. LANDRY " " 17,200 H. MILLER " " 1,100 JAMES RUSSELL " " 1,700 DONALD MCKEE " " 4,800 JAMES GEHRIG " " 4,200 HAROLD BALES " " 4,400

WITH REGARD TO THE ABOVE-NAMED INDIVIDUALS FOR THE TIME PERIOD STATED, WE HEREBY WAIVE THE OVERPAYMENTS UNDER THE AUTHORITY OF 5 U.S.C. SEC. 5584 (1976) AND 4 C.F.R. PART 91 (1977) SINCE THE OVERPAYMENTS WERE THE RESULT OF ADMINISTRATIVE ERROR AND THERE IS NO INDICATION OF FAULT OR LACK OF GOOD FAITH ON THE PART OF THE EMPLOYEES IN ACCEPTING THE PAYMENTS.

AS TO THE PERIOD PRIOR TO 1975 AND THE OVERPAYMENTS MADE TO UNIDENTIFIED EMPLOYEES, THESE OVERPAYMENTS WOULD NOT BE SUBJECT TO WAIVER UNDER 5 U.S.C. SEC. 5584 SINCE THERE IS NO AUTHORITY FOR WAIVING UNKNOWN DEBTS OWED BY UNKNOWN INDIVIDUALS. SEE CANAL ZONE POSITIONS, B-188000, OCTOBER 12, 1977; AND B-179186, OCTOBER 24, 1973. HOWEVER, UNDER THE FEDERAL CLAIMS COLLECTION ACT OF 1966, 3 U.S.C. SECS. 951-953 (1970), AND THE REGULATIONS CONTAINED IN 4 C.F.R. PART 104 (1977), COLLECTION ACTION ON CLAIMS MAY BE TERMINATED WHERE IT APPEARS LIKELY THAT THE COST OF FURTHER COLLECTION ACTION WILL EXCEED THE AMOUNT OF RECOVERY. THE MILITARY SEALIFT COMMAND HAS STATED THAT IT WOULD ENCOUNTER EXTREME DIFFICULTIES IN RESEARCHING RECORDS, DETERMINING THE AMOUNTS OF OVERPAYMENT, AND LOCATING THE EMPLOYEES, AND THAT THE COST OF RECOVERY MIGHT BE GREATER THAN THE ULTIMATE RECOVERY. THEREFORE, WE BELIEVE THESE OVERPAYMENTS MEET THE STANDARDS FOR TERMINATION OF COLLECTION. SEE CANAL ZONE POSITIONS, SUPRA; AND CLARK AIR BASE, B-181467, JULY 29, 1976.

ACCORDINGLY, THE OVERPAYMENTS SINCE 1975 ARE HEREBY WAIVED AND THE OVERPAYMENTS PRIOR TO 1975 NEED NOT BE COLLECTED.

THE MILITARY SEALIFT COMMAND HAS ALSO REQUESTED RELIEF FROM LIABILITY FOR ITS DISBURSING OFFICERS WHO MADE THE OVERPAYMENTS AS A RESULT OF AN ADMINISTRATIVE ERROR. SINCE WE HAVE DETERMINED THAT THE OVERPAYMENTS SINCE 1975 MAY BE WAIVED UNDER THE AUTHORITY OF 5 U.S.C. SEC. 5584, WE NEED NOT CONSIDER WHETHER TO RELIEVE THE DISBURSING OFFICERS FROM LIABILITY FOR THESE OVERPAYMENTS. SUBSECTION (D) OF SECTION 5584 EXPRESSLY PROVIDES THAT FULL CREDIT SHALL BE GIVEN TO ANY ACCOUNTABLE OFFICIAL FOR ANY AMOUNTS WAIVED UNDER THAT SECTION.

THE OVERPAYMENTS PRIOR TO 1975 MAY BE CONSIDERED UNDER THE PROVISIONS OF 31 U.S.C. SEC. 82A-2 (1970) WHICH STATES THAT THE COMPTROLLER GENERAL (OR HIS DESIGNEE) MAY RELIEVE A DISBURSING OFFICER OF ACCOUNTABILITY AND RESPONSIBILITY FOR THE MAKING OF ANY ILLEGAL, IMPROPER, OR INCORRECT PAYMENT. THAT AUTHORITY MAY BE EXERCISED ONLY WHEN IT IS DETERMINED THAT THE PAYMENT WAS NOT THE RESULT OF BAD FAITH OR LACK OF DUE CARE ON THE PART OF THE DISBURSING OFFICER. IN THE PRESENT CASE THE MILITARY SEALIFT COMMAND HAS STATED THAT THE DISBURSING OFFICERS WHO MADE THE OVERPAYMENTS DID SO IN GOOD FAITH AND WITH NO INTENTION OF FRAUD. ACCORDINGLY, WE HEREBY RELIEVE THE DISBURSING OFFICERS OF LIABILITY FOR THE OVERPAYMENTS.