

DATE: July 22, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2019-WV-102304.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 10 U.S.C. § 2774, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive repayment of erroneous payments of pay and allowances made to members of the uniformed services if repayment would be against equity and good conscience, and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member.

**DECISION**

A member of the U.S. Marine Corps requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-102304, dated March 26, 2021.

**Background**

While on temporary duty (TDY) during the period March 2018 through July 2018, the member was erroneously paid for meals and incidental expenses (M&IE) at the incorrect daily rate, resulting in a debt of *per diem* in the total amount of \$10,118.31. The Defense Finance and Accounting Service (DFAS) found that the member relied upon his command to correctly determine the rate for his M&IE and recommended that DOHA waive his debt in full. However, the DOHA adjudicator characterized the M&IE payments as advanced payments and declined to waive the debt under 10 U.S.C. § 2774.

In his reconsideration request, the member presents evidence that the debt did not result from an advance payment of funds but was the result of accrual payments, based on the authorized submission of his M&IE data in the Defense Travel System (DTS), while he was deployed. He states that throughout his deployment he received partial payments of his authorized *per diem* amount and used the payments to purchase food and supplemental nutrition products. He submits his bank statements reflecting the purchases he made for food items during his deployment.

### **Discussion**

Under 10 U.S.C. § 2774, we have authority to waive repayment of erroneous payments of military pay and allowances to members of the uniformed services if repayment would be against equity and good conscience, and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member.

In this case, the record reflects that the member was erroneously overpaid \$10,118.31. DFAS and the member's command discovered, after the member's deployment, that he along with other members were overpaid because their M&IE were incorrectly reimbursed at the rate of \$57.00 per day when those expenses should have been reimbursed at the rate of \$3.50 per day, since food was provided but not prepared for them. The member relied on the M&IE rate of \$57.00 per day listed on his Deployment Resource Guide and what was provided him during his pre-deployment brief, as well as his command's determination that he was entitled to that rate. Under the circumstances, we find that the member acted in good faith in accepting the overpayment and that waiver of the \$10,118.31 debt is appropriate under 10 U.S.C. § 2774.

## Conclusion

The member's request for reconsideration is granted and the debt is waived in the full amount of \$10,118.31. In accordance with DoD Instruction 1340.23 (February 14, 2006) ¶ E8.10, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr.

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board