

any additional SDAP. As a result of this administrative error, the member became indebted in the amount of \$9,740.00 (\$7,040.00 + \$2,700.00) for the erroneous SDAP he received during the period June 2021 through December 2021.

The member requested waiver of the debt. In his waiver request, the member acknowledged that he knew he was not entitled to the retroactive payment of SDAP, and he was no longer performing recruiting duties that would entitle him to continue to receive monthly payments of SDAP. He stated that in April 2021, he received a phone call from his administrative office notifying him that they had authorized him a back payment of SDAP by mistake. He stated that his administrative office also knew he was no longer performing recruiting duties. He asked his administrative office what he needed to do about the error and was told that the issue would be corrected.

On October 4, 2022, the Defense Finance and Accounting Service (DFAS) denied the member's waiver request. In the member's appeal of DFAS's denial of his waiver request, he stated that the overpayment was paid to him by his prior command, was due to no fault on his part, and he should not be held responsible for it. He also explained the financial hardship caused by having to pay the debt.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's waiver request. The adjudicator noted that the member received leave and earnings statements (LES) during the period of overpayment. The adjudicator specifically detailed what was reflected on his LES. The adjudicator explained that the member knew he was no longer performing recruiting duties at the time he was notified in April 2021 that his administrative office had erroneously authorized him retroactive payments of SDAP. Therefore, the adjudicator concluded that since the member was aware in April 2021 that his administrative office had erroneously authorized him retroactive payments of SDAP, and he was no longer performing recruiting duties, waiver of the erroneous payment of SDAP he received was not appropriate. The adjudicator explained that although financial hardship is not a basis for waiver, DFAS, in its own discretion, may arrange a repayment plan which takes any hardship into account.

On April 18, 2024, the member submitted a statement to DOHA that he wished to request reconsideration of the appeal decision, but DOHA received nothing further from him.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances made to members or former members if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. Whether to grant waiver under 10 U.S.C. § 2774, as the statutory language indicates, is not decided as a matter of right whenever a member innocently receives pay to which he is not entitled but is decided on the principles of equity and fairness presented in each case. The fact that the erroneous payments are the result of administrative error is not sufficient basis, in and of itself, for granting waiver. The implementing regulation for our waiver authority is set forth

under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). A waiver is usually not appropriate when a member knows, or reasonably should know, that a payment is erroneous. The member has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction ¶ E4.1.4.

We have consistently held that military members have a duty to verify the information reflected in pay documentation submitted to them. If a member is provided information which if reviewed would indicate an error, waiver of a resulting overpayment is precluded. *See* DOHA Claims Case No. 2021-WV-060304.2 (October 4, 2022).

In this case, the erroneous payments were made through administrative error, but that alone may not serve as a basis for relieving the member of the obligation to refund the overpayment. The member received a monthly LES during the period of the overpayments, and he acknowledged that he no longer was performing recruiting duties. In addition, in April 2021, he was notified by his administrative office that he was erroneously authorized retroactive payment of SDAP. Therefore, he was on notice of the error when he then received a lump sum payment for retroactive SDAP in June 2021, and continued to receive a monthly payment of SDAP from July 2021 through December 2021, at the rate of \$450.00 per month. Under the circumstances, the DOHA adjudicator properly concluded that the member knew that there was an error in the payment of his SDAP and should have held the erroneous funds for eventual repayment to the Government. Therefore, we find the adjudicator had a sufficient basis for denying waiver relief and find no error in the appeal decision.

Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated March 28, 2024. In accordance with DoD Instruction 1340.23 (February 14, 2006) ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

Signed: Richard C. Ourand, Jr.

Richard C. Ourand, Jr.
Administrative Judge
Member, Claims Appeals Board

Signed: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board