

DATE: August 13, 2024

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In Re: )

[REDACTED] )

) Claims Case No. 2023-WV-061504.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A member received active duty pay and allowances for three months after he was released from active duty. Waiver of the overpayment is not appropriate because he knew or should have known that he was receiving pay in excess of his entitlement, and therefore, had the responsibility to bring the payment to the attention of the appropriate officials, and to hold the excess funds until he received a definite, written determination of his entitlement to them.

**DECISION**

A member of the U.S. Marine Corps requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2023-WV-061504, dated March 11, 2024, which allowed in part, and denied in part, waiver of the member's debt.

**Background**

The member was issued Reserve Officer Commissioning Program orders assigning him to Galveston, Texas. On August 13, 2021, he was issued continuation of active duty orders for temporary duty (TDY), calling him to report to Camp Pendleton, California, not later than September 18, 2021. These orders advised the member that he had eight travel days and also informed him that upon successful completion of his TDY, he would be released from active duty and assigned to Galveston. On December 16, 2021, a detaching endorsement memorandum was issued detaching the member from his TDY assignment at Camp Pendleton and advising him to comply with his original orders to report back to Galveston. The member was released from active duty from the Marine Corps on December 24, 2021, after the completion of eight travel days and on December 25, 2021, was no longer entitled to any active duty military pay and allowances. During the period December 1, 2021, through December 24, 2021, the member was

entitled to receive net pay in the amount of \$3,633.63. However, he received \$4,727.03 in December 2021. Therefore, he was overpaid \$1,093.40 (\$4,727.03 - \$3,633.63). The Defense Finance and Accounting Service (DFAS) recommended waiver of the overpayment of \$1,093.40, and our office granted waiver of the overpayment. Therefore, that amount is not in dispute.

The amount in dispute is the \$17,095.77 debt resulting from the member receiving three months of active duty pay and allowances after his release from active duty from the Marine Corps. In DOHA's decision dated March 11, 2024, the adjudicator agreed with DFAS that the subsequent erroneous payments of active duty pay and allowances, received by the member for the period January 1, 2022, through April 30, 2022, in the amount of \$17,095.77, was not appropriate for waiver under the authority of 10 U.S.C. § 2774. The adjudicator pointed out that the member's orders stated that upon completion of his TDY, he was to be released from active duty, and his detachment memorandum dated December 16, 2021, stated that he was to detach and comply with his orders to report back to Galveston. The adjudicator determined that even though the member was issued multiple DD Form 214s, *Certificate of Release or Discharge from Active Duty*, with incorrect end-of-active-service dates, he was aware that he was released from active duty as of December 24, 2021. In fact, the adjudicator noted the member acknowledged that he was aware that his separation date was incorrect, and therefore, promptly notified the appropriate officials. Since the member was aware of his correct separation date and did not perform any military duties during the period January 1, 2022, through April 30, 2022, the adjudicator found that collection of the \$17,095.77 was not against equity and good conscience, nor contrary to the best interest of the United States.

In his request for reconsideration, the member states the administrative error with his DD 214 was not corrected until May 30, 2022. Therefore, he was not able to be dropped from active duty and transferred to the Selected Marine Corps Reserve (SMCR) to begin drilling with his assigned unit until that time. He states that due to this error, he missed out on 12 days of inactive duty training, which equates to 24 drill periods. He states that he would have rated \$115.91 per drill, which equates to \$2,781.84 in lost wages, during the period that he was jobless and seeking to have the administrative error resolved so that he could continue with his service. He requests that his lost wages be considered in his request for waiver.

### **Discussion**

Section 2774 of title 10 of the United States Code provides authority for waiver claims for erroneous payments of pay and certain allowances made to or on behalf of members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria are met by a finding that the claim arises from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. The standard employed to determine whether a person was "at fault" in accepting an overpayment is whether, under the particular circumstances, a reasonable person should have known or suspected that he was receiving more than his entitlement. A service member who knows that he is receiving payments in error has the duty to retain such amounts for refund to the Government. *See* DOHA Claims Case No. 02101701 (January 8, 2023). The fact that the debt

arose due to administrative error does not entitle a member to waiver or relieve the member of the responsibility to verify the correctness of the payments received. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.

In this case, the member has acknowledged that he knew there was an error and promptly reported it to the proper pay officials. Under the circumstances, the member had a duty to seek corrective action until the matter was resolved, and in the meantime, he did not acquire title to the overpayments and should have held them for eventual repayments. *See* DOHA Claims Case No. 00082301 (October 4, 2000).

As for the lost earnings attributable to the administrative error causing a delay in the member to begin drilling in the SMCR, DOHA's authority in this matter pertains only to the availability of the equitable remedy of waiver. We cannot waive any amount that otherwise is inappropriate for waiver. *See* DOHA Claims Case No. 2012-WV-082016.2 (March 19, 2013). Finally, DOHA's decision in the member's case under our waiver authority set forth in 10 U.S.C. § 2774, does not preclude the member from seeking other available remedies. The member may wish to seek relief by petitioning the Board for Correction of Naval Records (BCNR) pursuant to 10 U.S.C. § 1552. Under that statute, the BCNR's authority to correct a military record is discretionary and broader than DOHA's authority under the waiver statute. Under 10 U.S.C. § 1552(a)(1), the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary, in this case, the Secretary of the Navy, considers it necessary to correct an error or remove an injustice. This remedy is outside DOHA's authority and any request for a correction of the record needs to be pursued with the BCNR.

## Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated March 11, 2024. In accordance with Instruction ¶ E8.15, 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  
Administrative Judge  
Chair, Claims Appeals Board

Signed: Richard C. Ourand, Jr.

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

Signed: Charles C. Hale

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Charles C. Hale  
Administrative Judge  
Member, Claims Appeals Board