



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203-1995



DATE: June 20, 2025

In Re:

[REDACTED]

Claimant

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Claims Case No. 2023-WV-11504.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 32 U.S.C. § 716, our office has the authority to waive claims for erroneous payments of pay and certain allowances made to or on behalf of members of the National Guard. The fact that a debt arose due to an administrative error does not entitle a member to waiver or relieve the member of the responsibility to verify the correctness of the payments received.

DECISION

A member of the Army National Guard requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2023-WV-111504, dated September 30, 2024.

Background

On June 1, 2016, the Illinois Army National Guard issued the member, then a major, a *Notification of Promotion Status* memorandum advising him that a Department of the Army (DA) Reserve Components Selection Board selected him for promotion from a list of majors to the grade of lieutenant colonel. The memorandum in pertinent part also informed the member of the following:

To be promoted, you must remain in an active status, be medically qualified for retention, meet the standards of the Army Body Composition Program in AR 600-

9 and otherwise meet the promotion eligibility criteria shown in AR 135-155. As an Active Guard Reserve (AGR) officer, *you must be assigned* to a duty position authorized a grade equal or higher than the grade in which selected and an AGR control grade must be available. Field grade positions are still dependent on OCPMS selection.

...

If, on approval of the board, you meet the criteria above, you may submit a promotion packet through your S1. On promotion, your date of rank and effective date of promotion will be the date of promotion. (emphasis added).

On September 22, 2017, the Guard issued orders reassigning the member from one duty assignment to another, effective October 1, 2017. On September 29, 2017, the Guard issued orders promoting the member to the grade of a lieutenant colonel with the effective date of October 1, 2017, and date of rank of October 1, 2017. On October 16, 2017, the National Guard Bureau issued special orders announcing the extension of federal recognition of the member's promotion to lieutenant colonel with an effective date of October 1, 2017. The orders reflected both the member's promotion eligibility date (PED) and date of rank (DOR) as lieutenant colonel as October 1, 2017. On October 16, 2017, the National Guard Bureau issued the member a memorandum entitled *Promotion as a Reserve Commissioned Officer of the Army*. That memorandum advised the member that his promotion to lieutenant colonel and his time in grade for promotion to the next grade would be computed from his PED, October 1, 2017, which was also his DOR. Therefore, effective October 1, 2017, the member was promoted to lieutenant colonel and began receiving pay and allowances based on that rank. The record reflects that the member continued to properly receive pay and allowances as a lieutenant colonel through October 30, 2018.

On June 26, 2018, the Guard issued orders amending the orders issued on September 29, 2017, and changing the member's DOR from October 1, 2017, to May 10, 2016. On July 27, 2018, the National Guard Bureau issued special orders amending the orders issued on October 16, 2017, and changing the member's PED and DOR from October 1, 2017, to May 10, 2016. As a result, the member's records in the Integrated Personnel and Pay System (IPSA) were updated to reflect his entitlement to receive pay and allowances as a lieutenant colonel effective May 10, 2016, and in November 2018, the member received \$24,746.79 in back pay (\$22,793.79 basic pay for the period May 10, 2016, through September 30, 2017, and \$1,953.00 for basic allowance for housing for the period October 1, 2016, through December 31, 2017). On June 18, 2020, the member was released from active duty but remained a member of the Guard.

The record reflects that the National Guard Bureau later determined that the member's DOR and PED should have remained October 1, 2017, and he was not entitled to receive pay for a lieutenant colonel based on a DOR of May 10, 2016. On June 28, 2021, a debt in the amount of \$24,746.79 was established on the member's Master Military Pay Account. On July 9, 2021, the Guard notified the member by memorandum of the indebtedness.

On September 2, 2021, the member requested waiver of the debt in the amount of \$24,746.79. In his waiver request, he stated that he first became aware of the erroneous payment

on November 18, 2018, when his wife informed him that they had received what appeared to be an overpayment. The member stated that he told his wife to transfer \$13,415.38 to their savings account because it was probably an error, and he would need to pay it back. On November 30, 2018, according to the member, they received another overpayment of \$13,724.10. He stated that he and his wife then placed the difference over his normal pay into a savings account in anticipation of having to pay it back. The member stated that he worked with several people to clear up the matter. He stated that he made multiple trips to the finance office and talked to the most senior civilians there in order to get an explanation of the overpayment. He stated that he talked to an Army National Guard senior advisor who told him that they would research the overpayment. He stated that when he went back a couple of days later, she told him that the payment was valid. The member stated that he wanted a second opinion so he visited the Human Resources Office and talked to two members who informed him that they would research the payment. After looking into the matter, they informed him that the payment was valid. He stated that he was told by multiple people in professional positions that the payment was valid. He stated he also talked to other members he worked with. He attached statements from those members he worked with and his wife. He also requested his leave and earnings statements (LES) for the period March 2016 through March 2019. He stated that his pay is accurate on all the statements with the exception of the LES for November 2018. He attached a document reflecting that on June 27, 2018, the error was made when a pay technician erroneously inputted his DOR as May 10, 2016. Specifically, the member stated the following concerning that attachment:

Also, please find Attachment 8, which is the error. On the seventh line of this document, you see where [pay technician] erroneously keyed my Date of Rank to May 10th, 2016, which was my DA Select Date. He did this on June 27th of 2018, which created the overpayment in November of 2018.

The member wrote that he requested a waiver of his debt because the error was administrative, and he went to see the most seasoned employees within the finance office in order to return the funds but was told by many experienced staff that the payment was valid. The member stated that he also verified that the payment was valid with his Human Resources Office. He stated that he did his due diligence to determine if the payment was erroneous. He stated that he and his wife spent the money because they believed he was entitled to it. He referred to statements he attached from his wife and others with whom he worked closely with to prove his multiple attempts to resolve the erroneous payment and validate that it was correct. The member stated that in March 2021, he was verbally informed of the debt, and on July 9, 2021, he received official notification of the indebtedness by memorandum.

The Defense Finance and Accounting Service (DFAS) recommended to DOHA waiver of the overpayment in the amount of \$24,746.79. DFAS found that based on the member's statements, he exercised due diligence to verify and validate the erroneous payment. In the DOHA decision, the adjudicator declined to follow DFAS's recommendation and found that waiver of the member's debt was not appropriate. The adjudicator noted that there were no official signed statements from finance officials included in the record reflecting that the member questioned the payments and was told they were valid. The adjudicator did find evidence in the record which reflected the requirements for the member's promotion, and which showed that the

effective date of the member's promotion could not precede the date on which the promotion memorandum was issued. The adjudicator further identified the Army regulations cited in the member's orders and discussed these regulations in detail. The adjudicator found that the member could not be promoted to the higher grade unless his duty assignment required that of a lieutenant colonel, and there was no indication in the record that the member's duty assignment on May 10, 2016, was that of a lieutenant colonel. The adjudicator found that on October 1, 2017, the member was properly attached to a position at the higher grade of a lieutenant colonel effective October 1, 2017. Therefore, the adjudicator stated that when the member's promotion was inexplicably revised to May 10, 2016, which preceded the issuance of his promotion memorandum, it clearly conflicted with the written documentation he had received. The adjudicator stated that when a member is aware or reasonably should be aware of an erroneous payment, he has a duty to question the proper officials regarding his entitlements and should not rely on vague assertions that his pay is correct. Instead, the member has a duty to request official documentation reflecting his entitlements, and until he receives that documentation, the member has a duty to set aside the overpayment for eventual return to the government. Without such documentation, the adjudicator found that collection of the \$24,746.79 was not against equity and good conscience, nor contrary to the best interest of the United States.

In his request for consideration, the member states that DFAS recommended waiver of the debt. He states that DFAS found he exercised due diligence to verify and validate the erroneous payment. He states that the adjudicator implies that because he did not get official, signed statements from his finance officials revealing that he spoke with them, and that they in writing told him that the payment was not erroneous, that he did not exercise due diligence. He includes again a statement from another member who recalls the situation and the steps the member took and points out that he, too, was later advised by the same finance staff that he would receive the payment, also. The member further states that the adjudicator seems to focus on what his orders stated, and the Army regulations cited by the orders. He states that at the time of the overpayment, he was not able to research regulations and thoroughly review all his orders. He states that he did believe the payment to be erroneous and that is why he sought guidance from senior officials. He requests that the Claims Appeals Board look at the totality of the circumstances in consideration of his request for reconsideration.

Discussion

Under 32 U.S.C. § 716, we have the authority to waive collection of erroneous payments to a member or former member of the National Guard if repayment 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. *See* Department of Defense Instruction 1340.23 (Instruction) (February 14, 2006).

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* Instruction) ¶ E4.1. A member is considered to be at least partially at fault, and waiver is precluded when, in light of all the circumstances, it is determined that he should have known that he was being overpaid. The standard employed to determine whether a member was

“at fault” in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person should have known or suspected that he was receiving more than his entitlement. A member is considered to be aware of an erroneous payment when he possesses information which reasonably suggests that the validity of the payment may be in questions. It is a long-standing rule that members have a duty to verify information on documentation provided to them involving their pay and allowances. *See* DOHA Claims Case No. 2012-WV-062502.2 (September 20, 2012). A 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). Once a member receives information that brings the validity of payment into question, he has a duty to seek corrective action until the matter is resolved, and in the meantime does not acquire title to the overpayment and should hold the questionable funds for eventual repayment.

In this case, the member has acknowledged that when he received the erroneous payment, he believed it to be in error, held the funds in his savings and promptly reported it to the proper pay officials. He further acknowledged in his original waiver request that he knew the change to his pay was based on his “DA Select Date” of May 10, 2016. As detailed by the adjudicator, this date clearly conflicted with the orders and other documentation received by the member regarding his promotion and DOR. Our decisions have consistently held that there is no basis for waiver unless the official(s) providing the advice is identified and the member’s version of events is corroborated in the written record by pay or disbursing officials with evidence of the member’s statement(s) to them and their statement(s) to the member. *See* DOHA Claims Case No. 09091601 (September 30, 2009); DOHA Claims Case No. 02120917 (December 20, 2002); and DOHA Claims Case No. 01010906 (March 8, 2001). Although the member has included statements from his wife and other members he worked with, he has not provided any statements from pay officials, either in his pay office or his Human Resources Office, verifying the accuracy of the payment he received. Under the circumstances, waiver is not appropriate.

Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated September 30, 2024. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Catherine M. Engstrom

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Administrative Judge

Chair, Claims Appeals Board

Michelle P. Tilford

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Administrative Judge

Member, Claims Appeals Board

David F. Hayes

David F. Hayes

Administrative Judge

Member, Claims Appeals Board