



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



DATE: December 15, 2025

)	
In Re:)	
[REDACTED])	Claims Case No. 2024-WV-020703.3
)	
Claimant)	

**CLAIMS APPEALS BOARD
 RECONSIDERATION DECISION**

DIGEST

Title 10, United States Code (U.S.C.), § 2774 provides authority for waiving claims for erroneous payments of pay and allowances, including retired pay, made to or on behalf of members or former 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.

When a member is aware or should be aware that he is receiving payments in excess of the member’s entitlements, the member does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

DECISION

A retired member of the U.S. Navy requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2024-WV-020703.2, dated July 30, 2025.

Background

On February 1, 2022, the member retired from the Navy with 24 years of active duty. However, due to an administrative error when the member’s retired pay account was established, the member erroneously received retired pay based on 27 years of active duty instead of 24 years causing the member to be overpaid \$11,203.06 in retired pay during the period February 1, 2022, through March 31, 2023.

The member applied for waiver of the indebtedness on August 12, 2023, and the Defense Finance and Accounting Service (DFAS) recommended DOHA waive the member’s debt

because DFAS believes the member reasonably relied on the expertise of administrative personnel to pay him the proper rate of retired pay; that the member would not have known that he was erroneously being overpaid due to the erroneous inclusion of inactive service time into the calculation of his retired pay especially since the member's DD Form 214, *Certificate of Release or Discharge from Active Duty*, dated January 26, 2022, reflected the incorrect active service time; and that there would have been no reason for the member to question the Naval Personnel Command (NPC) subject matter experts during his retirement process. DFAS forwarded their recommendation to DOHA on February 7, 2024.

On March 14, 2025, DOHA remanded the case file to DFAS in order to obtain the necessary information to properly adjudicate the case file. After receiving the documentation necessary to adjudicate the case, the DOHA adjudicator declined to follow the recommendation of DFAS to waive the debt and issued a decision denying waiver of the debt on July 30, 2025. The adjudicator denied waiver on the basis that the member was provided information in the form of DD Form 214s and *Statement of Service* documentation in the course of his military career which listed his active duty and inactive duty time periods. The adjudicator determined that the member was aware or reasonably should have been aware that his retired pay was miscalculated. The adjudicator found that the member was aware that he had not served 27 years of active duty, on which his retired pay was based. Therefore, the member should have questioned the DD 214 he received on January 26, 2022, which reflected incorrect information concerning his active duty prior to his continuous active duty during the period November 1, 2004, through January 31, 2022. The adjudicator also stated that DFAS provided the member with a *Welcome to the Retired Roll's* notice on February 14, 2022. That notice informed the member that his monthly base pay (designated as his active duty base pay) is the average of the 36 highest monthly basic pay rates he received on active duty. The notice then stated that his service was 27 years, 9 months and 22 days. The adjudicator found that the member should have questioned the proper pay officials concerning the amount of his retired pay, and since he failed to do so, waiver was not appropriate.

In his request for consideration, the member states that he relied in good faith on information provided to him by the NPC throughout his retirement process. He states that he proactively engaged with the NPC subject matter experts to verify his time in service and was provided with official estimates and documentation reflecting a total of 27 years of active service. He states that he was never made aware of any discrepancy, and that the erroneous time in service calculation originated from the Navy itself. He states that this is confirmed in published reports and government correspondence acknowledging administrative error affecting over 1,200 retired members. He states that despite his due diligence and the reassurances he received from Navy personnel, more than a year after his retirement DFAS notified him that a correction had been made to his retired pay and that he would be subject to a retroactive debt collection. He states that the DOHA adjudicator's denial of his waiver request implies that he should have questioned a miscalculation of his retired pay that neither he nor the Navy's own experts identified. He states that DOHA's decision creates a troubling precedent in that service members are expected to possess greater knowledge of retired pay policy than the institutions responsible for its administration. He states that it also presents no consequences to the administrative offices for errors, while individual retired members shoulder the full financial and emotional burden. He states that waiver should be granted because he demonstrated good faith

and reliance on official guidance, the government has admitted its administrative error, and there is no fraud, misrepresentation or fault on his part.

Discussion

Under 10 U.S.C. § 2774, DOHA has the authority to waive collection of erroneous payments of pay and allowances to a member of the uniformed services 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. *See* Department of Defense Instruction 1340.23 (Instruction) (February 14, 2006). The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3.

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. The legal definition of “fault” in waivers determinations does not imply any ethical lapse on the part of the member. It merely indicates that the member is not entirely without responsibility for any resulting overpayment, and that, therefore, the equitable remedy of waiver is not available to him. 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 question. 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. 2021-WV-051804.2 (May 4, 2022). 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 was provided with documentation that incorrectly reflected his active duty years of service for retired pay as 27 years, instead of 24 years on his *Welcome to Retired Rolls*. The member knew or should have known from his own personnel records and other information available to him that he had completed only 24 years of active duty service at the time of his retirement. Specifically, as detailed in the adjudicator’s decision, the member was provided with DD 214s and documentation during his service in the Navy which reflected that he served 24 years of active duty. Therefore, the member should have reasonably been aware that the information he received at retirement did not accurately reflect his record of service, especially since it conflicted with his previous statements of service and his prior DD Form 214s. Under the circumstances, the DOHA adjudicator properly concluded that the member knew or should have known that there was an error in the establishment of his retired pay. We find the adjudicator had sufficient basis for denying waiver relief and find no error in the decision issued on July 30, 2025.

Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated July 30, 2025. In accordance with Instruction ¶ 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: Michelle P. Tilford

Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board