

KEYWORDS: Waiver of indebtedness

DIGEST: Under 32 U.S.C. § 716, we may grant waiver of a debt arising out of an erroneous payment of pay and allowances 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 or any other person having an interest in obtaining the waiver.

CASENO: 2017-WV-082502.2

DATE: 01/03/2019

DATE: January 3, 2019

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2017-WV-082502.2
	)	
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 32 U.S.C. § 716, we may grant waiver of a debt arising out of an erroneous payment of pay and allowances 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 or any other person having an interest in obtaining the waiver.

**DECISION**

A member of the U.S. Air National Guard requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-082502, dated May 11, 2018. In that decision, DOHA accepted the recommendation of the Defense Finance and Accounting Service (DFAS) to waive \$54,363.33 of the government’s claim against the member for the erroneous overpayment of pay and allowances, and deny waiver of the remaining \$17,077.53 of the overpayment.

## **Background**

The member was a civilian technician employed by the Air National Guard. Pursuant to military orders, he performed military duty during the period October 10, 2006, through June 18, 2010, for which he received military pay and allowances. However, it was later determined that the member worked as a civilian employee concurrently while performing military service and received both civilian salary and military pay and allowances for the same period. Specifically, it was determined that the member was not in the proper status (civilian leave statute, military scramble orders (MSO), prior to, during and/or subsequent to performing military duty, resulting in the violation of mandatory flying duty and crew rest rules. As a result, the member became indebted in the amount of \$71,440.86 for the erroneous payment of military pay and allowances during the period October 10, 2006, through June 18, 2010.

In the appeal decision, the DOHA adjudicator upheld DFAS's recommendation to waive \$54,363.33 of the member's debt, and deny waiver of the remaining \$17,077.53. The \$17,077.53 represents the portion of the overpayment the member received in military pay and allowances based on the same hours he received civilian salary during the period October 10, 2006, through June 18, 2010. The adjudicator reasoned that when the member completed his military duty, he should have verified his civilian pay records to make sure he was not receiving duplicate compensation. Therefore, the adjudicator concluded that if the member had reviewed his records, he would have been aware that he was receiving duplicate payments.

In his reconsideration request, the member states that the value of the \$17,077.53 overpayment of military pay and allowances for the overlapping 128 hours of civilian salary is \$6,079.04. He contends that the debt should not be considered a military pay and allowances debt, but a debt for the civilian salary. He states that since he has already paid back \$7,202.62 of the \$17,077.53, this should be applied to his civilian debt of \$6,079.04, which would entitle him to a refund in the amount of \$1,123.58.

## **Discussion**

Under 32 U.S.C. § 716, we may grant waiver of a debt arising out of an erroneous payment of pay and allowances 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 or any other person having an interest in obtaining the waiver.

Our authority in this case is restricted to a consideration of whether the member's debt may be waived under 32 U.S.C. § 716.<sup>1</sup> The establishment of a debt is a matter primarily for administrative determination, and our office will not question a determination in the absence of clear error. *See* DOHA Claims Case No. 2015-WV-032301.2 (September 29, 2015). The

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<sup>1</sup>We do note that if the member's debt had been determined to be a debt for civilian salary, the proper statute for adjudicating the waiver request would be 5 U.S.C. § 5584. However, the standards for waiver under 32 U.S.C. § 716 and 5 U.S.C. § 5584 are the same.

member's debt for military pay and allowances was discovered after audits were conducted by the California Air National Guard and the National Guard Bureau. DFAS calculated the amount of the debt and established the debt against the member. If the member wishes to contest the validity of the debt or the amount of the debt, he should contact his finance office and DFAS. In addition, DOHA has no authority over the collection of a debt. That authority rests solely with DFAS.

### **Conclusion**

The member's request for relief is denied, and we affirm the appeal decision dated May 11, 2018. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense under DOHA's waiver authority.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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Ray T. Blank, Jr.  
Member, Claims Appeals Board

