

KEYWORDS: Waiver of indebtedness

DIGEST: Waiver of an overpayment of basic allowance for housing at the dependent rate is appropriate only to the extent that the overpayment was spent for its intended purpose.

CASENO: 2011-WV-080102.2

DATE: 10/27/2011

DATE: October 27, 2011

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In Re:	)	
[REDACTED]	)	Claims Case No. 2011-WV-080102.2
	)	
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver of an overpayment of basic allowance for housing at the dependent rate is appropriate only to the extent that the overpayment was spent for its intended purpose.

**DECISION**

A member of the United States Navy requests reconsideration of the October 4, 2011, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-080102. In that decision, our Office waived \$10,500.00 of the government’s claim and denied waiver of \$3,937.23, of the total claim of \$14,437.23.

**Background**

The record shows that the member was divorced but was receiving basic allowance for housing at the dependent rate (BAH-D) on behalf of his dependent children. On September 8, 2010, the member was assigned government quarters. As a result, he was no longer entitled to receive BAH-D. Due to an administrative error, he continued to receive BAH-D from September 8, 2010, through March 31, 2011, causing an overpayment of \$15,631.00. During the period of overpayment, the member was entitled to receive basic allowance for housing at the differential rate (BAH-Diff) in the amount of \$1,193.77, and that amount was applied to the overpayment, reducing it to \$14,437.23.

In determining the amount waived, the DOHA adjudicator followed the long-standing principle that the intended purpose of BAH-D is to help the member defray the cost of providing quarters for his dependents when government quarters are not furnished. The adjudicator found evidence in the record that the member provided support to his dependent children in the amount of \$10,500.00 during the period September 8, 2010, through March 31, 2011.

In his request for reconsideration, the member states that he was not aware that a divorced sailor could not reside in government quarters as a geographical bachelor, or he would have made other housing arrangements. He states that the base assigned two officers to a room and did not notify him that he was ineligible to live in the barracks. The member further states that in addition to paying child support for his dependent children in the amount of \$10,500.00 during the period of overpayment, he used the overpayment to pay the mortgage (\$1,800.00 per month) on his house where his fiancée lived with her two children. He attaches his bank account records and home loan documentation reflecting payment of approximately \$1,800.00 per month for his mortgage.

### **Discussion**

Under 10 U.S.C. § 2774, we have authority to waive collection of erroneous payments of pay and allowances to a member 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.

The purpose of BAH-D is to reimburse a member at least partially for providing housing for his dependents when government quarters are not provided. If a member receives an overpayment of BAH, it is well-established that waiver is appropriate only to the extent that the overpayments were spent for the purpose intended – *i.e.*, the support of the member's child or children. *See* DOHA Claims Case No. 2010-WV-010504.2 (October 27, 2010), DOHA Claims Case No. 09042701 (May 1, 2009) and DOHA Claims Case No. 06110906 (November 27, 2006). In this case, the adjudicator properly waived the member's debt for the erroneous payment of BAH-D to the extent that the member provided child support to his dependent children. However, we see no basis for further waiver of the debt from the documentation provided by the member in his reconsideration request. Although the member's fiancée and her two children may have resided in the member's house during the period of overpayment, there is

no indication in the record that any of these three individuals had dependency status for the purpose of payment of BAH.<sup>1</sup> Therefore, the mortgage payments made by the member during the period of overpayment were not spent for the intended purpose of BAH-D.

Finally, we have no authority to grant waiver with respect to the overpayment of BAH-D based upon the member's suggestion that his quarters were not adequate. The adequacy of quarters is an administrative matter which should be pursued through proper military channels. *See* DOHA Claims Case No. 02122602 (January 13, 2003).

### **Conclusion**

Accordingly, the request for reconsideration is denied, and the decision of October 4, 2011, is affirmed. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board

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<sup>1</sup>As set forth in Chapter 10 of volume 1 of the Joint Federal Travel Regulations, generally a member's lawful spouse and legitimate, unmarried, minor children are dependents for housing allowance purposes. However, dependency must be determined before a housing allowance is authorized.