

DATE: September 22, 2015

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2014-WV-100102.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

While a member is expected to review her leave and earnings statements and is considered to be at fault if a debt accrues due to her failure to review them, waiver may be granted to a member who provides clear and convincing evidence of a medical condition which prevented her from reviewing them.

**DECISION**

The member requests reconsideration of the July 14, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Case No. 2014-WV-100102. In that case, this Office reviewed \$14,573.57 of the total debt of \$16,712.14. The Defense Finance and Accounting Service (DFAS) had previously reduced the debt by \$2,138.57, which is not at issue here. We waived \$1,144.16, for a total waiver of \$3,282.73, and denied waiver in the amount of \$13,429.41.

**Background**

The member was issued orders to Active Duty for Training (ADT) to report no later than January 9, 2011, through April 1, 2011, for 83 days. On February 14, 2011, a modification of her orders was issued changing the period of duty to January 9, 2011, through February 4, 2011, for 27 days. The member's pay account was not updated to reflect this change, and the member continued to receive active duty pay and allowances until March 31, 2011. In our appeal decision, we waived pay and allowances received through February 15, 2011, which was her mid-month pay, due to the abrupt change in her orders as well as the confusion surrounding her medical condition. The member argued that there were valid medical reasons why she did not

follow her financial transactions, but the adjudicator determined that there was no evidence in the form of medical documentation, records, or physicians' statements in the file to reflect that.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. Waiver is generally not appropriate when documentation (*e.g.*, Leave and Earnings Statements (LES)) is provided, which if reviewed would have indicated the presence of error. However, waiver may be granted if the record contains clear and convincing evidence of severe medical impairment which prevented such review.

In Comptroller General decision B-217914, June 25, 1986, the Comptroller General waived a member's debt because a serious medical condition impaired his ability to conduct his financial affairs. The Comptroller General stated that with adequate medical documentation of impairment, collection of a member's debt would be against equity and good conscience and not in the best interests of the United States.

The case before us has similar circumstances. The member has presented documentation of medical incapacitation in the form of lists from her doctor of the medications she was taking as soon as she arrived home after the ADT. While we continue to stress the importance of a member's review of her LES, we agree with the Comptroller General that waiver is appropriate when the member provides clear and convincing evidence of her inability to review them for medical reasons. *See* DOHA Claims Case No. 00062601 (September 19, 2000).

The file indicates that the member contacted an appropriate official on March 24, 2011, and it was at that time that she was advised of the overpayment. Since she received one pay period after March 24, which was the end-of-month pay on March 31, 2011, she should have known that payment was erroneous and should have held it for repayment. The gross amount of that payment was \$4,476.47. Therefore, it is appropriate to waive an additional \$8,952.94, and deny \$4,476.47.

### **Conclusion**

For the reasons above, we hereby waive an additional \$8,952.94. In accordance with the DoD Instruction 1340.23 ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

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Jean E. Smallin  
Chairman, Claims Appeals Board

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William S. Fields  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board