

DATE: November 17, 2015

---

In Re:

[REDACTED]

Claimant

---

)  
)  
)  
)  
)

Claims Case No. 2015-WV-062904.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A waiver is usually not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside funds for eventual repayment to the government.

**DECISION**

A former member requests reconsideration of the August 25, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-062904. In that decision, this Office denied waiver of an overpayment of \$738.40 incident to military service.

**Background**

The member separated from the U.S. Navy (USN) on February 17, 2010. The Defense Finance and Accounting Service (DFAS) advised this Office that for the period February 1, 2010, through February 17, 2010, she was entitled to receive net pay in the amount of \$1,286.23.<sup>1</sup> However, the member received \$2,033.32 (\$356.65 on February 15, 2010, and \$1,676.67 on March 8, 2010). Since the member received \$2,033.32, but was only entitled to \$1,286.23, she was overpaid \$747.09. DFAS previously granted waiver of \$8.69, which left the member liable for \$738.40 (\$747.09 - \$8.69). DFAS advised this Office that the \$738.40 represents the amount of the member's UCMJ forfeiture.

---

<sup>1</sup> The breakdown of entitlements (basic pay, basic allowance for subsistence, clothing allowance, etc.) and deductions (federal income tax, meal deduction, social security tax, Uniform Code of Military Justice (UCMJ) forfeiture, etc.) were fully explained in the appeal decision.

The member states that she was hospitalized in September 2011 due to a Traumatic Brain Injury and was found to have pre-existing, untreated Anxiety and Depressive Disorder. She is currently on medication which has been helpful. She now realizes that she was self-medicating her disorders with alcohol and engaged in destructive behaviors, which resulted in her Non-Judicial Punishment (NJP). She requests waiver of the \$738.40, the amount of the UCMJ forfeiture.

### **Discussion**

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances 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 interests of the United States. Generally, these criteria are met with a finding that the claim arose with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other persons having an interest in obtaining the waiver.

The member has requested waiver of the overpayment as she contends the debt was an erroneous payment. This Office has consistently held that the waiver statute does not automatically relieve the debts of all members who, through no fault of their own, have received erroneous payments from the government. Waiver action under 10 U.S.C. § 2774 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. If it were merely a matter of right, then virtually all erroneous payments made by the government to members would be excused from repayment. Additionally, the United States is not liable for the erroneous actions of its officers, agents, or employees, even though committed in the performance of their official duties. *See* DOHA Claims Case No. 09092401 (October 16, 2009), and DOHA Claims Case No. 07082707 (September 4, 2007).

The fact that the member received \$1,676.67 on March 8, 2010, should reasonably have led her to believe she was being overpaid when she had no expectation of being paid for the entire month of February, and she was aware she was subject to forfeiture of her pay. The member has indicated that she had medical issues which may have caused the conduct that led to the NJP. However, as the adjudicator in the appeal decision noted, all of the medical documentation that the member presented was subsequent to her September 2011 injury. There was no documentation that was concurrent with the conduct that led to the NJP. Since there is no indication in the case file that the member questioned the significant unexplained separation payment at the time she received it, we believe denial of the \$738.40 is not against equity and good conscience, nor would it be contrary to the best interests of the United States. The member indicated that she would provide medical documentation for that earlier time frame, but none was provided.

It should be noted that the \$738.40 is the amount representing the UCMJ forfeiture. Our Office has no authority to investigate the circumstances surrounding the imposition of NJP. This Office will generally not question a service's actions in administrative matters within the discretion of the service unless the service violates a statute or regulation or acts in an arbitrary

or capricious way. There is no evidence of that in this case. *See* DOHA Claims Case No. 97040301 (October 28, 1997); and Comptroller General decisions B-244598, Oct. 2, 1991, and B-259696, Jan. 25, 1995. Under the circumstances of this case, waiver of the amount of the forfeiture would be interference with the UCMJ process.

Finally, our decision is limited to consideration of the remedy of waiver of the member's debt under the waiver statute, and we deny waiver. This decision does not prevent the member from pursuing any other remedy that she may have. The adjudicator stated that the member might contact the Board for Correction of Naval Records (Correction Board) if she had concerns about the circumstances of the NJP and/or her separation. The member indicates that she has submitted an application to the Correction Board and has supplied medical documentation to them. That action is separate from the waiver process.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the August 25, 2015, appeal decision to deny waiver in the amount of \$738.40. In accordance with the Department of Defense Instruction 1340.23 ¶ E7.15, this is the final administrative action of the Department of Defense in this matter.

*///Original Signed///*

---

Jean E. Smallin  
Chairman, Claims Appeals Board

*///Original Signed///*

---

Catherine M. Engstrom  
Member, Claims Appeals Board

*///Original Signed///*

---

Natalie Lewis Bley  
Member, Claims Appeals Board