

September 19, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00062601

CLAIMS APPEALS BOARD DECISION

DIGEST

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

DECISION

This is in response to an appeal of the Defense Department of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 00050810, dated June 21, 2000, which denied an employee's waiver request. The employee's debt arose when he erroneously continued to receive Post Allowance Differential (PAD) for six months after he was transferred to a position in the United States. We overrule the Settlement Certificate and waive the employee's debt.

Background

The employee held a position in Saudi Arabia until January 3, 1999, and then was transferred to the United States. Although he was no longer entitled to PAD after the transfer, he continued to receive PAD until July 3, 1999. The resulting debt amounted to \$5,345.60. The employee indicated that he noticed the error in June or July of 1999 and called it to the attention of his payroll office. Our Settlement Certificate denied waiver on the grounds the employee could have halted the accrual of the debt by proper review of his leave and earnings statements (LES) immediately after his transfer and was therefore partially at fault for its continued accrual. With his appeal, the employee has submitted a letter from his doctor stating that he was receiving medical care at the time that his debt accrued and that his ability to review his LES would have been severely impaired.

Discussion

Under 10 U.S.C. § 5584, 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 interest of the United States if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. In *Lieutenant Colonel Joseph D. Donald, USAR, Retired*, B-217914, June 25, 1986, the Comptroller General waived collection of the debt of a retired military member after the member provided a letter from his orthopedic surgeon stating that the medications which the member was taking would have impaired his ability to conduct his financial affairs. The Comptroller General stated that under such circumstances collection of the member's debt would be against equity and good conscience and

not in the best interest of the United States.

The case before us is similar to the situation in *McDonald*, B-217914, *supra*. The employee has presented documentation of medical incapacitation in the form of a letter from his doctor stating that his medical condition in early 1999 prevented him from properly reviewing his LES. While we continue to stress the importance of an employee's reviewing of his LES, we agree with the Comptroller General that waiver is appropriate when the employee provides clear and convincing evidence of his inability to review them for medical reasons.

Conclusion

We overrule the Settlement Certificate and grant waiver of the employee's debt of \$5,345.60.

/s/

Christine M. Kopocis

Acting Chairman, Claims Appeals Board

/s/

Erin C. Hogan

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board