

DATE: January 28, 2020

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In Re: )  
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          [REDACTED] ) Claims Case No. 2019-WV-010402.2  
Claimant )  
          ) )  
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**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 U.S. Marine Corps (USMC) requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 2019-WV-010402, dated November 13, 2019. In that decision, DOHA waived a portion of the claim in the amount of \$23,000.00, and denied waiver of the remaining \$20,534.00.

**Background**

The member and his dependents were residing in family quarters overseas. In August 2016 the member submitted a request for Early Return of Dependents (EROD) of his spouse and one of his minor dependents. His request was approved by his Command and he notified his Regional Personnel Administrative Center (RPAC) of his EROD to ensure his entitlements were correct. In October 2016 the member's spouse and one of his minor dependents returned to the United States. The member and his other minor dependent remained overseas. Since the member's spouse returned to the United States, he was granted basic allowance for housing at the dependent rate (BAH-D) based on his spouse's residence. However, it was later determined that since the member continued to reside in family quarters, he was not entitled to receive BAH-D based on his spouse's residence. As a result of this administrative error, the member was

overpaid \$43,534.00 for the BAH-D payments he received during the period October 3, 2016, through January 31, 2018.

The Defense Finance and Accounting Service (DFAS) recommended waiver of the claim because the member had no reason to know he was being overpaid. He completed all appropriate paperwork, and relied on his Command and RPAC's advice concerning his entitlements. In DOHA Claim No. 2019-WV-010402, the DOHA adjudicator waived \$23,000.00 of the government's claim. This decision was based on the fact that the adjudicator found evidence in the record that the member paid his spouse's rent in that amount during the period of overpayment. The adjudicator denied waiver of the remaining \$20,534.00 of the debt because the member did not use this amount for its intended purpose.

In his reconsideration request, the member provides documentation reflecting the amounts he paid for childcare, grocery and phone service on behalf of his spouse and minor dependent during the period of overpayment.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive repayment of erroneous payments of military pay and allowances to members of the uniformed services if repayment 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.

In this case, the DOHA adjudicator partially waived the amount of the member's debt for the erroneous payment of BAH-D in the amount of \$23,000.00 based on the evidence in the record. The additional documentary evidence provided by the member reflects that he used the remaining \$20,534.00 for its intended purpose.

## Conclusion

We hereby waive the remaining \$20,534.00. In accordance with Department of Defense Instruction 1340.23 (February 14, 2006) ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

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: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board