

KEYWORDS: Waiver of Indebtedness, BAH-D, Lodging

DIGEST: When a member is aware or should be aware that he is being overpaid, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment to the government.

CASE NO: 2016-WV-120901.4

DATE: 07/19/2019

DATE: July 19, 2019

In Re:)	
[REDACTED])	Claims Case No. 2016-WV-120901.4
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member is aware or should be aware that he is being overpaid, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment to the government.

DECISION

A member of the U.S. Coast Guard, through his attorney, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-120901.3, dated April 3, 2019. In that decision, DOHA sustained the Coast Guard’s denial of the member’s application for waiver of a debt to the government in the amount of \$88,267.15.

Background

The member, a reservist in the Coast Guard, was issued orders to Atlantic Beach, Florida, for the period December 1, 2006, through September 30, 2007. These orders were subsequently extended through December 31, 2009. Since the member was on extended orders, he was entitled to receive basic allowance for housing at the dependent (BAH-D) rate based on Houston,

Texas, which he properly received during the period December 1, 2006, through December 31, 2009, in the amount of \$49,577.00. In addition, pursuant to his orders, the member was authorized *per diem*. During the period November 30, 2006, through December 30, 2009, the member received *per diem* (lodging) payments in the amount of \$88,267.15. However, the Coast Guard later determined that since the member resided in a home owned by his spouse and his spouse's parents, he was not entitled to receive lodging costs. Thus, the member became indebted to the government for the erroneous payment of his lodging costs in the amount of \$88,267.15.

The Coast Guard denied the member's request for waiver of the debt. The Coast Guard found that the original deed dated December 29, 2006, on the property where the member rented listed his spouse as a shared owner with her parents. In July 2014, after the overpayment was discovered, the member's spouse was removed as part owner of the property. Although the member provided receipts and lease agreements for the property, the Coast Guard found that the amount the member was paying in rent (\$2,200.00 per month) was substantially higher than the BAH rate for the area (\$1,300.00 per month for 2006 and \$1,359.00 per month for 2007). The Coast Guard also found that the property was last purchased for \$61,700.00 which equated to a monthly mortgage payment of \$488.00 per month. In addition, the Coast Guard found that the current rental rate for a house the same size was \$1,100.00 per month. Under the circumstances, the Coast Guard determined that waiver of the debt was not appropriate.

In the appeal decision, the DOHA adjudicator upheld the Coast Guard's denial of waiver. The adjudicator determined that the member's allegation that he paid almost twice as much rent for the property for the area because of the risk of early termination of the lease was without merit considering the proven market price for properties in the area and no supporting documentation presented by the member to the contrary.

In the member's request for reconsideration, the member maintains that he acted reasonably under the circumstances and in good faith when he rented his in-laws' investment property while on active duty orders. He states that in anticipation of moving from Houston to Jacksonville to be closer to his duty station, he asked his command if he could rent a home which his in-laws owned. He states that he did research and the approving official agreed that since the member would not be living with his in-laws and the property was an investment, his rental was not in violation of the Joint Travel Regulations (JTR). He states that during the period of overpayment from December 2006 to December 2009, he submitted his monthly travel claims which consisted of receipts and copies of his lease agreements to verify the amount claimed and its validity. He followed the process monthly, was promptly paid, thereby verifying his entitlement. He returned to Houston and it was not until four years later in April 2014 that he was informed of the debt. He states that he and his wife were unaware that her name was placed on the deed to the home, and once the error was detected, it was removed. He also states that the Coast Guard, in its original denial of his waiver request, acknowledges that the JTR does not preclude a member from renting a commercial property from a relative, so long as it is not the relative's primary residence. The Coast Guard's reason for denying his waiver application was prefaced on a finding that he acted in bad faith by paying an exorbitant rate based on the fair market value for the area to allegedly enrich his relatives.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive 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 by a finding that the claim arose from an administrative error with no other indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining waiver of the claim. *See* Department of Defense Instruction 1340.23 (February 14, 2006).

Under the JTR and our case law, a member is not entitled to reimbursement for lodging incident to temporary duty where the lodging is rented from a friend or relative. *See* JTR Table 2-15; DOHA Claims Case No. 2012-WV-122003.2 (June 24, 2013); and DOHA Claims Case No. 2012-WV-061201.2 (October 25, 2012). The reason for this prohibition against reimbursement while lodging with friends or family is to eliminate potential abuses from occurring in connection with these claims. Here, although the member states that he had no knowledge that his spouse's name was on the deed, he knew his in-laws were owners of the home he was renting. The member states that he never exceeded the authorized *per diem* rate when submitting his monthly claims for lodging. However, the record evidence shows that the rent he claimed for his in-laws' home was almost twice as much as the rental market value for a similar residence and over four times the monthly mortgage payments for the property. Under the circumstances, we believe the Coast Guard and the DOHA adjudicator properly concluded that the member and/or his relatives were unjustly enriched.

The member asserts that his entitlement to *per diem* at the rate he was claiming for renting from his in-laws was affirmed and reaffirmed with his command and the authorizing official. However, we have consistently emphasized the importance of written statements from the officials who provided the erroneous advice, including a detailed description by them of what they told the member. The record here is devoid of statements confirming the advice the member states he received. *See* DOHA Claims Case No. 2009-WV-040805.3 (August 12, 2010).

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated April 3, 2019. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board