



During the period February 1, 2008, through December 8, 2010, the member rented a fully furnished townhouse with all amenities included through a property management company, and received *per diem* which included the cost of his lodging in the total amount of \$140,140.81. The owner of the townhouse purchased it in October 2006 and used the property management company to rent it while she attended college over 200 miles away from the property. On May 25, 2009, the member married the owner of the townhouse, she cancelled her property management company's subletting agreement and they began residing together at the property.

In 2014 the Coast Guard determined the member was not entitled to receive lodging costs during the period he rented the townhouse because he had resided in a home owned by his friend/fiancé/spouse in violation of the Joint Travel Regulations (JTR). The Coast Guard established a debt against the member for his lodging costs in the amount of \$88,291.81.<sup>1</sup>

The member submits evidence reflecting that the property management company had no personal relationship with either him or his spouse. The company representative in a notarized statement explained the rental market in the area and provided the member's lease payment history.

### **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.

In this case, during the period February 1, 2008, until the member's marriage on May 25, 2009, the member was leasing a fully furnished townhome with all amenities included from a property management company pursuant to a valid lease. The evidence the member has submitted reflects he was charged a reasonable rental rate for the property. Prior to the member's marriage, his spouse was attending school over 200 miles away and did not reside with him at the property. In addition, she had previously used the property management company to rent her townhome to other tenants while she was attending school. Therefore, under the circumstances, we find that the member acted in good faith in accepting the overpayment he received through May 24, 2009, in the amount of \$65,473.00.

However, when the member married in May 2009 he knew he had a change of circumstances and properly alerted the appropriate officials questioning his entitlements. Although he sought clarification from his command, he never received a definite response. Since the member knew that his entitlement was at least questionable, he should have sought further guidance in the matter, and in the meantime, held the money until he received a final,

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<sup>1</sup>The Coast Guard found that the member was entitled to receive reimbursement for meals and incidental expenses (MI&Es) in the amount of \$51,849.00 during this period.

written determination of the payments. Under the circumstances, waiver is not appropriate for the portion of the overpayment the member received during the period May 25, 2009, through December 8, 2010, in the amount of \$22,818.81. *See* DOHA Claims Case No. 2016-WV-120901.4 (July 19, 2019); and DOHA Claims No. 2009-WV-040805.3 (August 12, 2010).

### **Conclusion**

We hereby waive \$65,473.00 and deny waiver of \$22,818.81. In accordance with DoD 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: Ray T. Blank, Jr.

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