

DIGEST: A member received pay and allowances while in confinement. Waiver under 10 U.S.C. § 2774 is not appropriate since he knew or should have known that he was receiving erroneous deposits of pay to his banking account to which he was not entitled.

KEYWORDS: Waiver of Indebtedness

CLAIM NO: 2017-WV-111403.2

DATE: 05/31/2018

DATE: May 31, 2018

In Re:)	
[REDACTED])	Claims Case No. 2017-WV-111403.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member received pay and allowances while in confinement. Waiver under 10 U.S.C. § 2774 is not appropriate since he knew or should have known that he was receiving erroneous deposits of pay to his banking account to which he was not entitled.

DECISION

A former member of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-111403, dated April 30, 2016.

Background

Effective May 7, 2015, the member was in a non-pay status due to his civilian confinement. Due to an administrative error, the member's pay account was not updated to

reflect his incarceration. As a result, he continued to receive pay and allowances through June 15, 2015, causing an overpayment of \$6,761.43.¹

The DOHA adjudicator upheld DFAS's denial of waiver of the claim. Although the member stated that he was unaware that the money was being deposited into his account, the adjudicator cited the long-standing rule that the fact that a member has pay directly deposited into his bank account does not relieve him of the responsibility of verifying his bank statements and questioning any discrepancies. The member asserted that he did not have access to his banking information and he had no control over automatic withdrawals from his account for his monthly mortgage payments and other legal obligations, nor his parents making withdrawals from it. The adjudicator stated that since it was ultimately the member's responsibility to monitor his pay and bank accounts, and he had not presented any evidence reflecting that he was not privy to this information, waiver was not appropriate. She stated that a member is not entitled to a waiver as a matter of legal right whenever he receives an overpayment resulting in an administrative error; that instead, the waiver statute's purpose is to relieve a member from the obligation of reimbursing the government when the facts and circumstances reflect that the member could not have reasonably been aware of the error, and when collection would be against equity and good conscience, and contrary to the best interest of the United States.

In his request for reconsideration, the member states that he could not have been reasonably aware of the pay error because he did not have access to his banking information. He attaches a signed statement from his case manager at the prison where he is incarcerated which substantiates that during his confinement, he did not have access to the internet. He further states that when the overpayments were deposited into his bank account, he was in reception prior to arriving at the prison, and communication was very limited. He only had two opportunities per week to make a 15-minute phone call. Due to this restrictive environment, he was unable to talk to his commander until July 2015. By the time his commander informed him of the overpayments, it was too late and he was unable to retain the money for refund to the government.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive 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. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting waiver. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.3. Waiver is 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 the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. A member is considered to be aware of an erroneous payment when he

¹The member was entitled to receive pay and allowances during the period May 1, 2015, through May 6, 2015, in the amount of \$1,347.29. However, he was erroneously paid \$3,306.54, causing an overpayment of \$1,959.25. This amount was waived by the Defense Finance and Accounting Service (DFAS) and is not at issue in our decision.

possesses information which reasonably suggests that the validity of the payment may be in question. *See* DOHA Claims Case No. 07111603 (November 30, 2007); DOHA Claims Case No. 07011711 (January 25, 2007); DOHA Claims Case No. 04031102 (March 22, 2004); DOHA Claims Case No. 00021411 (April 13, 2000); and DOHA Claims Case No. 98033023 (June 25, 1998).

The member states that he did not have access to his leave and earnings statements (LES) or bank records during the period of overpayment. He states that he had no control over the automatic deductions being made from his bank account, nor the withdrawals his parents were making. Our office has consistently held that a reasonable person would be aware of his correct bank balance and would therefore be aware of any unexplained payments. Therefore, claiming lack of knowledge of erroneous deposits does not provide a basis for waiver. *See* DOHA Claims Case No. 03021006 (February 14, 2003); DOHA Claims Case No. 01010219 (March 19, 2001); and DOHA Claims Case No. 98020428 (March 12, 1998). Although the member may not have had access to his bank account, he should been aware of his bank account balance. Since he knew that he was no longer in a pay status once he was incarcerated, that automatic payments were set up on his bank account to pay debts including his monthly mortgage payments, and that his parents were handling his banking matters, he should have advised his parents more about his pay situation in order for them to monitor his account. This would have put them on notice to alert him when they noticed his regular mid-month and end-of-month pay continued to be deposited into his account.

In addition, the erroneous payments deposited into the member's account went to satisfy the member's legal obligations. Therefore, the member received a direct benefit from receipt of the erroneous payments, and is liable to repay them. It is not inequitable to deny waiver under such circumstances. *See* DOHA Claims Case No. 04031102, *supra*; and Comptroller General decision B-193400, Jan. 31, 1979.

Conclusion

The member's request for relief is denied, and we affirm the April 30, 2018, appeal decision. In accordance with DoD Instruction 1340.23 ¶ 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