

KEYWORDS: Overpayment, Family Separation Allowance, FSH, indebtedness

DIGEST: Under 10 U.S.C. § 2774, when a member is aware that he has received an erroneous payment, he cannot reasonably expect to retain the overpayment, but must set it aside for eventual repayment when the error is corrected.

CASENO: 2018-WV-022102.2

DATE: 11/29/2018

DATE: November 29, 2018

In Re:	)	
[REDACTED]	)	Claims Case No. 2018-WV-022102.2
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 10 U.S.C. § 2774, when a member is aware that he has received an erroneous payment, he cannot reasonably expect to retain the overpayment, but must set it aside for eventual repayment when the error is corrected.

**DECISION**

A member of the United States Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-022102, dated October 18, 2018.

**Background**

On January 5, 2017, the member was called to active duty effective January 10, 2017, for a temporary duty (TDY) assignment away from his dependents. As a result, he was entitled to

receive family separation housing (FSH) allowance during the period January 10, 2017, through February 9, 2017. On February 10, 2017, he returned from TDY. Due to an administrative error, the member erroneously continued to be paid FSH upon his return from TDY when he was no longer separated from his dependents during the period February 10, 2017, through February 28, 2017, causing an overpayment of \$175.00

The Defense Finance and Accounting Service (DFAS) denied waiver of the member's debt because the member acknowledged that he knew he was overpaid. The DOHA adjudicator subsequently upheld DFAS's denial of waiver on the same basis.

In his request for reconsideration, the member provides no new evidence and continues to assert that he was not at fault for the overpayment. He states that he did everything in his power to prevent being overpaid and was proactive in making sure that the error would not occur. However, when he examined his leave and earnings statement (LES), he immediately knew he was overpaid, despite all his efforts to avert such a situation. He requests waiver as a matter of fairness. He maintains that by granting his waiver and notifying the local finance office about it, a message would clearly be sent to finance of the importance to take time and care when dealing with members and their finances.

### **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. *See* Comptroller General decision B-183460, May 28, 1975. 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.

In this case, the member acknowledges that he knew he was being overpaid. While we appreciate the member's diligence and care in trying to prevent any errors in his pay, this is not a basis for approval for waiver. Waiver is not appropriate because he knew he was being overpaid and had a duty to set aside the overpayment for repayment. *See* DOHA Claims Case No. 98042306 (May 6, 1998).

### **Conclusion**

The member's request for relief is denied, and we affirm the appeal decision, dated October 18, 2018. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense.

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