

KEYWORDS: Basic Allowance for Housing, BAH, waiver of indebtedness

DIGEST: Waiver is not appropriate when a member knows or should know that his receipt of Basic Allowance for Housing at the with-dependent rate is not proper.

CASENO: 2018-WV-042302.2

DATE: 09/24/2018

DATE: September 24, 2018

In Re:)	
)	
[REDACTED])	Claims Case No. 2018-WV-042302.2
)	
Claimant)	
)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate when a member knows or should know that his receipt of Basic Allowance for Housing at the with-dependent rate is not proper.

DECISION

A former member of the United States (U.S.) Navy, through his mother, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-042302, dated July 16, 2018.

Background

The member properly received Basic Allowance for Housing (BAH) at the dependent rate (BAH-D) due to his marriage. On April 6, 2013, he was divorced, and effective April 7, 2013, he was no longer entitled to receive BAH-D. Due to an administrative error, he

erroneously continued to receive BAH-D during the period April 17, 2013, through July 31, 2013, causing him to be overpaid \$3,116.75. These continued payments of BAH-D were reflected on the member's leave and earnings statements (LES). In August 2013 his pay account was updated to reflect his divorce and terminate his entitlement to BAH-D. However, due to another administrative error, for the two August pay periods, he received \$5,167.76 and \$1,187.25 (total of \$6,355.01), when he was only entitled to receive \$1,954.55. The member's typical pay for each pay period in 2013 was significantly less than he received as his mid-August pay. The August payments erroneously included excessive payments of another form of BAH which should have been used to reduce the overpayment of BAH-D. This caused an additional overpayment of \$4,400.46 (\$6,355.01 - \$1,954.55), increasing the member's debt to \$7,517.16 (\$3,116.75 + \$4,400.46). On April 5, 2014, the member was separated from the Navy, and payments due the member at that time were used to reduce his debt to \$2,459.78. In his application for waiver, the member only requested waiver of that amount. However, both the Defense Finance and Accounting Service (DFAS) and the DOHA considered the gross amount of \$7,517.16 for waiver.

DFAS denied the member's request for waiver, noting the erroneous nature of the payments and stating that financial hardship was not a valid basis for waiver. On appeal, the DOHA adjudicator upheld DFAS's denial, finding that the member reasonably should have known that he was being overpaid.

In his request for reconsideration, the member reemphasizes that the remaining debt after his discharge was only \$2,459.78. He states that he will accept DOHA's decision as long as the only amount remaining on his debt is \$2,459.78.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of 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, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the member. Waiver is not appropriate when a member knows, or reasonably should know, that a payment is erroneous. The member 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* Department of Defense Instruction 1340.23 (February 14, 2006) ¶ E4.1.4. In this case, when the member divorced, he should have known that his entitlement to BAH-D had ended. *See* DOHA Claims Case No. 07052910 (June 5, 2007); and DOHA Claims Case No. 02073010 (September 9, 2002).

While the remaining debt was correctly noted as \$2,459.78 at the member's separation from the Navy, the DOHA adjudicator properly considered the gross amount of the debt for waiver. If granted, in whole or in part, the indebtedness would have been reduced and depending upon the amount of waiver, could have resulted in the refund of any prior payments made. If the member has any further questions concerning the collection of his remaining debt, he should contact DFAS, since DOHA has no authority over collection actions.

Conclusion

The member's request for relief is denied, and we affirm the July 16, 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

DOHA Claims Case No. 2018-WV-042302.2

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