

DATE: January 23, 2017

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In Re: )

[REDACTED] )

Claimant )

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Claims Case No. 2016-WV-110410.2 )

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 32 U.S.C. § 716, waiver is not appropriate when a member was aware or should have been aware that he was being overpaid.

**DECISION**

A member of the Air National Guard requests reconsideration of the December 12, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-110410.

**Background**

On December 16, 2015, orders were issued authorizing the member to attend training in Texas and Mississippi, from February 16, 2016, through July 21, 2016. On February 11, 2016, the member's orders were cancelled. Due to an administrative error, the member's pay records were not timely updated to reflect that his training had been cancelled. As a result, on March 1, 2016, the member erroneously received \$923.55 in basic pay and \$579.00 for basic allowance for housing. Therefore, the member was overpaid \$1,502.55 (\$923.55 + \$579.00).

In the appeal decision, the DOHA adjudicator sustained the Defense Finance and Accounting Service's (DFAS's) denial of the member's waiver request. The adjudicator noted that the member had access to his leave and earnings statements (LES's) electronically on the MyPay system and had recently changed his password prior to receiving the overpayment. The adjudicator further noted that although his orders were cancelled on February 11, 2016, his LES

reflected that he received a \$1,502.55 payment for Active Duty for Training (ADT) on March 1, 2016, for the period February 16, 2016, through February 29, 2016.

In his reconsideration request, the member states that he believed the money deposited into his bank account was grant money. He states that he did not have access to his LES. He requests that waiver should be partially granted to him.

### **Discussion**

Under 32 U.S.C. § 716 (Statute), 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 has a duty to verify the information on his LES and bring any errors to the prompt attention of the proper authorities. When a member fails to do so and an error that could have been identified results in overpayment, waiver is not appropriate. *See* DOHA Claims Case No. 06111301 (November 15, 2006).

In this case, the member had no reasonable basis to expect pay and allowances during the period of overpayment, since his orders to report to training were cancelled, and he never traveled to Texas or Mississippi. Although the member states that he did not receive a LES reflecting the overpayments, he had access to his MyPay account and had a duty to verify deposits to his bank account. *See* DOHA Claims Case No 06111301, *supra*.

We further agree with the adjudicator that the member was promptly notified of the debt. The member received a debt notification dated March 2, 2016, by email and regular mail. In addition, the member acknowledges that he was told that he was overpaid on March 2, 2016. It is not against equity and good conscience to recover an erroneous payment when the government makes prompt notification, as it did here. *See* DOHA Claims Case No. 2015-WV-122906.2 (May 23, 2016).

As for the member's suggestion that a partial waiver be granted because the government should share responsibility for the indebtedness, there is no basis for apportioning fault under the waiver statute. The Statute precludes waiver if there is an indication of fault on the member's part. Therefore, partial waiver of the debt may not be granted on the basis that the member was only partially at fault and did not cause the overpayment. *See* DOHA Claims Case No. 2012-WV-070303.2 (November 20, 2012).

## Conclusion

The member's request for relief is denied, and we affirm the December 12, 2016, 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

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board

Signed: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board