

KEYWORDS: waiver of indebtedness

DIGEST: Waiver of an overpayment of basic allowance for housing at the dependent rate is appropriate only to the extent that the overpayment was spent for its intended purpose.

CASENO: 2016-WV-122908.3

DATE: 09/25/2017

DATE: September 25, 2017

In Re:)
[REDACTED]) Claims Case No. 2016-WV-122908.3
)
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of an overpayment of basic allowance for housing at the dependent rate is appropriate only to the extent that the overpayment was spent for its intended purpose.

DECISION

A member of the U.S. Air Force requests reconsideration of the amended decision by Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-122908.2, dated June 19, 2017. In that decision, DOHA waived a portion of the claim in the amount \$5,129.25 and denied waiver of the remaining \$10,546.23.

Background

The member was married to another active duty member, and her spouse was receiving basic allowance for housing at the dependent rate (BAH-D). Due to an administrative error, the member erroneously began receiving BAH-D effective November 5, 2013, while her spouse

continued to receive BAH-D. Since her spouse received BAH-D, the member became indebted in the amount of \$15,675.48.

The Defense Finance and Accounting Service (DFAS) recommended waiver of the claim because the member completed the proper paperwork to receive BAH-D and received erroneous information from her finance office regarding her entitlement. In DOHA Claim No. 2016-WV-122908.2, the DOHA adjudicator waived \$5,129.25 of the government's claim. This decision was based on the fact that the adjudicator found evidence in the record that the member provided support to her dependent only in the amount of \$5,129.25 during the period of overpayment. The adjudicator denied the remaining \$10,546.23 overpayment of BAH-D because the member did not use this amount for its intended purpose.

In her reconsideration request, the member provides evidence in the form of bank statements, receipts for paid daycare expenses, tax documentation reflecting dependent care expenses and receipts for miscellaneous expenses she incurred in support of her dependent during the period of overpayment.

Discussion

Under 10 U.S.C. § 2774, we have authority to waive repayment of erroneous payments of military pay and allowances to members of the uniformed services if repayment would be against equity and good conscience, and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member.

In this case, the DOHA adjudicator properly waived the member's debt for the erroneous payment of BAH-D in the amount of \$5,129.25 based on the evidence in the record. The additional documentary evidence provided by the member reflects that she used the remaining \$10,546.23 of BAH-D for its intended purpose.

Conclusion

We hereby waive the remaining \$10,546.23. In accordance with Department of Defense 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