

KEYWORDS: waiver of indebtedness

DIGEST: When a member is aware or should be aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

CASENO: 2009-WV-091405.2

DATE: 3/31/2010

DATE: March 31, 2010

In Re:)	
)	
[REDACTED])	Claims Case No.2009-WV-091405.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member is aware or should be aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

DECISION

A former member of the Army requests reconsideration of the January 6, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09091405. In that decision, DOHA allowed, in part, waiver of collection of the overpayment in the amount of \$228.11, but denied waiver of the \$844.42.

Background

On November 19, 2007, the member was discharged from the Army. He was overpaid \$228.11 on November 15, 2007. This amount was waived in the appeal decision by the DOHA adjudicator. On April 17, 2008, the member was overpaid \$844.42. Our Office denied waiver of the \$844.42, because the member should have known he was not entitled to any further payments over five months after separation.

In his request for reconsideration, the member does not dispute the decision reached by the DOHA adjudicator. However, he states that after reviewing the information used to decide his case, he noticed an error. He states that the Defense Finance and Accounting Service (DFAS) is in error concerning the amount of terminal leave he took prior to separation. In this regard, DFAS had previously advised our Office that the member took 50 days of terminal leave prior to his separation. The member states he requested 60 days of terminal leave prior to his separation (from September 21, 2007 to November 19, 2007), and it was approved. He attaches his *Request and Authority for Leave* (DA Form 31) which reflects that he took 60 days of leave prior to separating.

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. Waiver is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. *See* Department of Defense Instruction 1340.23 (Instruction), ¶ E4.1.4.

Our jurisdiction in this matter is limited to consideration under the waiver statute, 10 U.S.C. § 2774. Therefore, we do not have jurisdiction over issues concerning the member's leave account. However, we note that the discrepancy between the 50 days of terminal leave versus the 60 days of terminal leave may be explained by examining the member's *Statements of Military Leave Account* (DD Form 0-642s) for Fiscal Years (FY) 2007 and 2008. The FY 2007 DD Form 0-642 reflects that the member took ten days of terminal leave from September 21, 2007, through September 30, 2007. The FY 2008 DD Form 0-642 reflects that the member took an additional 50 days of terminal leave from October 1, 2007, through November 19, 2007. If the member has any further questions concerning his leave account, he should direct them to DFAS.

Conclusion

We affirm the January 6, 2010, 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: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board