

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: 2010-WV-111502.2

DATE: 4/13/2011

DATE: April 13, 2011

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2010-WV-111502.2

**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 United States Marine Corps requests reconsideration of the February 8, 2011, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-111502. In that decision, our Office waived \$5,229.07 of the government’s claim and denied waiver of \$8,481.62 of the total claim of \$13,710.69.

Background

The record shows the member was receiving basic allowance for housing at the

dependent rate (BAH-D) on behalf of his dependents. On November 2, 2005, the member divorced. Once divorced, the member was no longer entitled to receive BAH-D. The Defense Finance and Accounting Service (DFAS) did not receive notification of the member's divorce until December 2006. As a result, the member continued to receive BAH-D from November 3, 2005, through December 30, 2006, causing an overpayment in the amount of \$11,878.00. Due to an administrative error, the member's pay record was not updated to reflect his divorce, causing the member to erroneously continue to receive BAH-D from January 1, 2007, through June 30, 2007, in the amount of \$4,656.20. During this period, it was determined that the member was entitled to receive BAH at the differential rate (BAH-Diff) in the amount of \$4,190.17, which was applied to the BAH-D debt, reducing it to \$12,344.03 ($\$11,878.00 + \$4,656.20 - \$4,190.17$).

The record also shows that in January 2007, the member was deployed away from his duty station. Since he was divorced, he was not entitled to receive Family Separation Allowance at the temporary duty station (FSA-T). However, due to an administrative error, he erroneously received FSA-T from January 3, 2007, through June 16, 2007, causing an overpayment of \$1,366.66. Thus, the total debt is \$13,710.69.

In DOHA Claim No. 2010-WV-111502, the DOHA adjudicator waived \$5,229.07 of the government's claim and denied waiver of \$8,481.62 of the total claim of \$13,710.69. This decision was based on the fact that the adjudicator found evidence in the record that the member provided support to his dependents only in the amount of \$5,229.07, during the period February 2006 through December 2006.

In his request for reconsideration, the member states that he was paying child support from the date of his divorce through December 2006. He attaches a financial activity report from the Child Support Division of his state's Attorney General's office reflecting child support payments paid beginning in November 2005, rather than in February 2006. He also states that he was paying rent for his two daughters at his apartment during the period November 2005 through December 2006. He attaches a statement of charges for rent during this period.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments to a member if collection 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 waived the member's debt for the erroneous payment of BAH-D to the extent that the member provided child support. The additional documentary evidence provided by the member from his state's Attorney General's office reflects that he provided child support during the period November 2005 through January 2006 in the amount of \$714 (\$238 per month for three months). Therefore, we waive an additional \$714.

However, we see no basis for further waiver of the member's debt from the other documentation provided. The statement of charges for rent submitted by the member reflects that he was paying rent for a one-bedroom apartment during the period November 2005 through December 2006 in the amount of \$480 per month. We note that the lease for the apartment for the period in question does not list either of the member's dependent children as occupants. The member has not presented any further evidence of how his dependent children received a direct benefit from his rental of this apartment. *See* DOHA Claims Case No. 08082501 (August 28, 2008).

Conclusion

We hereby waive an additional \$714. 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: 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