

KEYWORDS: waiver of indebtedness

DIGEST: The former spouse of a member of the Coast Guard was awarded Transitional Compensation Benefits (TCB) by the Coast Guard. When she remarried in January 2009, she was no longer entitled to receive the TCB payments. She failed to notify the Coast Guard of her remarriage until April 2009, causing an overpayment in the amount of \$4,616.00. Due to an administrative error, the Coast Guard continued to erroneously pay her TCB through February 28, 2010, causing an overpayment in the amount of \$11,540.00. The former spouse applied for waiver of the total overpayment in the amount of \$16,156.00 under 10 U.S.C. § 2774. Partial waiver of the debt was granted for the TCB payment she received for the month of January 2009. Waiver of the remainder of the debt is denied because she was on notice that she was not entitled to TCB payments upon her remarriage.

CASENO: 2010-WV-120706.2

DATE: 3/31/2011

DATE: March 31, 2011

_____)
In Re:)
 [REDACTED]) Claims Case No. 2010-WV-120706.2
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The former spouse of a member of the Coast Guard was awarded Transitional Compensation Benefits (TCB) by the Coast Guard. When she remarried in January 2009, she was no longer entitled to receive the TCB payments. She failed to notify the Coast Guard of her remarriage until April 2009, causing an overpayment in the amount of \$4,616.00. Due to an administrative error, the Coast Guard continued to erroneously pay her TCB through February 28, 2010, causing an overpayment in the amount of \$11,540.00. The former spouse applied for waiver of the total overpayment in the amount of \$16,156.00 under 10 U.S.C. § 2774. Partial

waiver of the debt was granted for the TCB payment she received for the month of January 2009. Waiver of the remainder of the debt is denied because she was on notice that she was not entitled to TCB payments upon her remarriage.

DECISION

The former spouse of a member of the Coast Guard requests reconsideration of the January 25, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-120706. In that decision, DOHA waived \$1,154.00, and denied waiver of \$15,002.00 of an indebtedness arising from the Coast Guard's erroneous overpayment of Transitional Compensation Benefits (TCB).

Background

The record shows that effective May 14, 2007, the former spouse was awarded TCB through a program for abused dependents of former active duty members. On January 6, 2009, she remarried. As a result, she was no longer entitled to receive TCB. She did not notify the Coast Guard of her remarriage until April 2009, causing an overpayment in the amount of \$4,616.00, from January 1, 2009, through April 30, 2009. In addition, she continued to erroneously receive the TCB through February 28, 2010, causing an overpayment of \$11,540.00. Therefore, she was overpaid \$16,156.00 (\$4,616.00 + \$11,540.00).

The Coast Guard recommended denial of the entire overpayment. However, our Office determined that the former spouse acted in good faith in accepting the portion of the overpayment she received in January 2009 in the amount of \$1,154.00, and waived that amount. Our Office denied waiver of the remainder of overpayment in the amount of \$15,002.00. In denying waiver of this portion of the overpayment, the DOHA adjudicator noted that on April 20, 2007, the former spouse signed an *Application for Transitional Compensation* (DD Form 2698), stating that she would notify the Coast Guard within 30 days of her remarriage. However, she did not notify the Coast Guard until April 2009. She stated that at the time she notified the Coast Guard of her remarriage, she also alerted the Office of Retiree and Annuitant Services that she was in the process of getting her remarriage annulled. She stated that she asked how this would effect her entitlement to the TCB, and was advised that someone would get back to her. The DOHA adjudicator found that since she never received an answer regarding the effect of her annulment on her entitlement to the TCB, she should have continued to pursue the matter, even requesting written documentation of her entitlements.

In her request for reconsideration, the former spouse, through a legal assistance attorney, states that she continued to seek verification of her entitlement from the Coast Guard. She attaches phone records supporting these attempts. She also asserts that her mental state and hospitalization during the period in which she remarried prevented her from any sustained effort in pursuing verification of her entitlement, and also inhibited her from keeping a better written

record of the assurances she was verbally given by Coast Guard officials. She states that she sought to annul her remarriage based on her incapacity, but was informed that annulment was not possible because her new husband had been deployed. She believed that once he returned, she could annul her marriage and that annulment would retroactively entitle her to any TCB she received.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection would be against equity and good conscience and not in the best interest of the United States. Waiver may not be granted, however, if there exists in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith by the waiver applicant. *See* 10 U.S.C. § 2774(b). In this case, the applicant is a former spouse of a service member, who has received erroneous payments through a program that pays monthly transitional compensation to dependents of members separated from the armed services for dependent abuse.¹ The standard we use to determine “fault” is whether a reasonable person knew or should have known that she was receiving payments in excess of her entitlements. *See* DOHA Claims Case No. 00073115 (September 28, 2000). Our decisions and those of the Comptroller General indicate that waiver is not appropriate when an applicant is aware of information indicating an overpayment, even though the government may have made a mistake. In such instances, the applicant must have sought corrective action. The applicant does not acquire title to the excess payments merely because an administrative error occurred; she has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 09060901 (June 30, 2009), DOHA Claims Case No. 97062629 (July 17, 1997), and Comptroller General decision B-272194, Aug. 27, 1996.²

The record reflects that the applicant should have questioned her right to receive TCB after her remarriage in January 2009. As noted by the DOHA adjudicator, the applicant filled out the DD Form 2698 on April 20, 2007, acknowledging her responsibility to notify the Coast Guard within 30 days of her remarriage. The record also reflects that when the Coast Guard notified the applicant on June 4, 2007, that her application for TCB had been processed and that her entitlement period started April 18, 2007, and would run through April 18, 2010, she was again advised that she must notify the Coast Guard immediately if she remarried. She was

¹The statutory authority for the establishment of the transitional compensation program for dependents of members separated for dependent abuse is found under 10 U.S.C. § 1059. Under § 1059(g), payment of transitional compensation terminates if the former spouse remarries, effective as of the date of such marriage.

²These decisions were decided under 5 U.S.C. § 5584 because the applicants for waiver were civilian employees. However, the standard for waiver under 5 U.S.C. § 5584 and 10 U.S.C. § 2774 is the same.

subsequently notified by the Coast Guard that she had to annually certify her continued eligibility under the TCB program. The record reflects that the former spouse filled out an *Annual Certification for Continued Eligibility for Transitional Compensation Benefits (TCB)*, on December 10, 2008. On this form, she certified that she had not remarried. However, she remarried on January 6, 2009,³ but did not notify the Coast Guard of her remarriage until April 2009. Although the applicant states that she was told by a Coast Guard official that they would get back to her concerning the effect of an annulment on her entitlement to TCB, she admits she never received a definitive answer. Under these circumstances, she should have held the TCB payments for further verification, especially since she knew she was not entitled to TCB upon remarriage and had not obtained an annulment. In the meantime, she did not acquire title to the erroneous overpayments and should have held them until a final determination was made that they were hers or until she was asked to repay them. Since she knew she was receiving questionable payments, waiver of the \$15,002.00 is not appropriate. *See* DOHA Claims Case No. 09020204 (February 26, 2009), DOHA Claims Case No. 03072812 (July 30, 2003), and DOHA Claims Case No. 02032601 (May 13, 2002). Further, the phone records she attaches to her reconsideration request to support her contention that she continued to verify her entitlement to the TCB are for calls made during the period March 17, 2010, through April 16, 2010,⁴ not for phone calls made in 2009.

We understand that the applicant was suffering from medical problems. However, the medical documentation she submitted is dated January 2009. We note that our Office waived repayment of the portion of the overpayment she received in the month of January 2009. We have consistently held that under the waiver statute, absent clear and convincing evidence in the form of medical records that the individual was continuously in such poor health that it was unlikely she knew or could have known of the overpayments, the individual seeking waiver is at least partially at fault. *See* DOHA Claims Case No. 05042707 (May 31, 2005), and DOHA Claims Case No. 01111311 (November 30, 2001).

Conclusion

The applicant's request for relief is denied, and we affirm the January 25, 2011, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense.

Signed: Michael D. Hipple

³The former spouse signed the Certificate of Marriage on January 6, 2009; the application for the certificate was filed on December 12, 2008.

⁴We note that the applicant was informed in writing of the overpayment by the Coast Guard by letter dated April 13, 2010.

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