

KEYWORDS: waiver of indebtedness; USFSPA

DIGEST: The former spouse of a member is entitled to waiver of the remaining balance of her indebtedness for the erroneous payment of a portion of the member's retired pay she directly received under the Uniformed Services Former Spouses' Protection Act (USFSPA).

CASENO: 2011-WV-020107.3

DATE: 4/12/2011

DATE: April 12, 2011

In Re:)
 [REDACTED]) Claims Case No. 2011-WV-020107.3
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The former spouse of a member is entitled to waiver of the remaining balance of her indebtedness for the erroneous payment of a portion of the member's retired pay she directly received under the Uniformed Services Former Spouses' Protection Act (USFSPA).

DECISION

The former spouse of a retired member requests reconsideration of the February 3, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-020107. In that decision, DOHA denied waiver of the remainder of the collection of a debt owed by the former spouse for the erroneous overpayment of a portion of her ex-husband's military retired pay paid to her directly under the Uniformed Services Former Spouses' Protection Act (USFSPA).

Background

On February 2, 1996, the member and his former spouse divorced. Under the terms of the Order on Motion to Amend Final Judgment of Dissolution of Marriage signed on November 25, 1996, his former spouse was to be paid \$635.00 per month. The judgment stated that \$438.50 of this sum “shall be automatically deducted from the Respondent’s military pension as allowable by law,” and be paid directly to his former spouse. The balance of \$196.50 would be automatically deducted from the member’s wages and be paid through the county government’s depository. The member’s former spouse applied for her share of his retired pay under the USFSPA. She was correctly paid \$438.50 per month from the member’s retired pay through January 2006. The Defense Finance and Accounting Service (DFAS) erroneously increased her award to \$635.00 per month, retroactive to February 2000. As a result, DFAS erroneously issued her a retroactive payment in the amount of \$5,319.00, which represented the erroneous modified award in the amount of \$635.00 for the period February 2000, through December 2005. As a result, the former spouse became indebted to the government in the amount of \$5,319.00. Collection of the debt was initiated by DFAS in May 2006. The former spouse requested waiver of \$1,255.00, the remaining balance of the debt as of July 2010.

In the appeal decision, our Office upheld DFAS’s recommendation to deny waiver of collection of the remaining indebtedness in the amount of \$1,255.00. In her request for reconsideration, the former spouse states that she believed she was entitled to the payment and had no reason to question it.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of pay and allowances to or on behalf of service members if collection would be against equity and good conscience and not in the best interests of the United States and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the waiver applicant. In this case, this applicant is a former spouse of a service member who has received an erroneous payment from the service member’s retired pay account. 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.

The former spouse has provided additional information that she acted reasonably under the circumstances; therefore, waiver is appropriate for the remaining indebtedness. *See* Comptroller General decision B-228790, Mar. 1, 1991.

Conclusion

For the reasons stated above, we hereby waive \$1,255.00. 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