

DATE: November 30, 2011

In Re:)

[REDACTED])

) Claims Case No. 2011-WV-030403.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2774, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payment of pay and allowances to a member or former member of the Uniformed Services if payment would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member.

DECISION

A former Army service member requests reconsideration of the October 31, 2011, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claims No. 2011-WV-030403. In that decision, our Office denied waiver of the government's claim in the amount of \$8,763.61.

Background

The record shows that on June 6, 2000, the member entered active duty with the United States Army, and she was discharged on May 28, 2001. On April 17, 2006, the member re-entered active duty with the Army. At that time, her pay entry base date (PEBD) was correctly established as April 24, 2005, and she was paid correctly as an E-2 with one year of service through May 31, 2006. For reasons unknown, during June 2006, her PEBD was erroneously changed from April 24, 2005, to June 6, 2000, which then caused her years of service to be listed as six years instead of one. Despite the error, the Defense Finance and Accounting Service (DFAS) indicated that she was paid correctly until December 31, 2006.

The record further shows that in January 2007, the member was promoted from an E-2 to an E-3, retroactive to December 1, 2006. However, because of the erroneous June 2000 PEBD, DFAS advises our Office that the member's base pay and allowances were then miscalculated. Since the pay rate for an E-3 with six years of service was higher than the pay rate of an E-2 with one year of service, DFAS advises that the member was overpaid \$8,763.61 from December 1, 2006, through April 30, 2009. When the member was discharged from active duty, she was entitled to receive pay and allowances in the amount of \$2,690.97.¹ Since the member was indebted, this amount was applied to the debt, reducing it to \$6,072.64. However, we will consider \$8,763.61, the gross amount of the debt.

In her original waiver request, and again in her appeal, the member stated that she became aware of the overpayment in June 2007, when she was promoted to E-4. However, the member asks that the amount be waived because she contends that she was advised on several occasions by her retention Non-Commissioned Officer (NCO) that he had checked with finance and there was nothing to fix, that her PEBD was correct. She stated that she had sent in the proof, a diagram of a timeline that the retention NCO had drawn to explain the dates. Since that piece of evidence was not in the appeal decision, the adjudicator noted that there was no reasonable explanation why she should not have been aware that her pay was incorrect.

Title 10, United States Code, § 2774, provides authority for waiving claims for erroneous payments of pay and 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 interests of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member or any other person having an interest in obtaining the waiver.

The member stated that she alerted her superiors, and was advised by her retention NCO after coordination with finance that her PEBD was correct. In her reconsideration request, the member resubmits a document that she clearly believed was in her file previously. The document is a timeline of the member's dates of service, signed and dated by MSG [Redacted]. Most significant is the date September 12, 2007, and the statement, "Validated w/ Finance, said SM getting paid correctly & no changes needed." This was followed by the MSG's initials.

Our decisions and those of the Comptroller General have consistently held that there is no basis for waiver in these cases unless the official(s) providing the faulty advice indicating that the member was entitled to what she received are identified, and the member's version of events is corroborated in the written record by pay and disbursing officials. *See* DOHA Claims Case No.02120917 (December 20, 2002); DOHA Claims Case No. 01010906 (March 8, 2001); DOHA Claims Case 97042817 (July 1, 1997); and Comptroller General decision B-256417, July 22, 1994. The member contended throughout that she had the proof; however, at some point it disappeared from the file. This Office considers the document the member has resubmitted to be the type of corroborating evidence that is required.

¹ This is for thirteen days of pay and allowances, a clothing allowance, and nine days of lump sum leave.

Conclusion

The member's request for reconsideration is granted, and the debt is waived in the amount of \$8,763.61.² In accordance with the Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

/// Original Signed ///

Jean E. Smallin
Chairman, Claims Appeals Board

/// Original Signed ///

Gregg A. Cervi
Member, Claims Appeals Board

/// Original Signed ///

Natalie Lewis Bley
Member, Claims Appeals Board

² The member may claim the money previously offset against the debt, \$2,690.97, from DFAS. Please be aware there are deadlines associated with these claims. Check with DFAS regarding your specific claim.

