

DATE: April 19, 2012

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In Re:))
 [REDACTED]) Claims Case No. 2011-WV-120202.2
))
Claimant))
_____)

**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 U.S. Navy requests reconsideration of the February 24, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-120202. In that decision, our Office waived \$10,640.00 of the government's claim and denied waiver of \$14,970.35 of the total claim of \$25,610.35.

Background

The record shows the member was receiving basic allowance for housing at the dependent rate (BAH-D) on behalf of his dependents. On January 16, 2009, the member divorced. Once divorced, the member was no longer entitled to receive BAH-D. However, due to an administrative error, he continued to receive BAH-D from January 17, 2009, through July 25, 2010, causing an overpayment in the amount of \$25,610.35.

In DOHA Claim No. 2011-WV-120202, the DOHA adjudicator waived \$10,640.00 of the government's claim and denied waiver of \$14,970.35 of the total claim of \$25,610.35. 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 \$10,640.00, during the period January 15, 2010, through July 25, 2010.

In his request for reconsideration, the member states that he was paying child support from the date of his divorce. He attaches his divorce decree dated January 16, 2009, which reflects that he is obligated to pay child support in the amount of \$669.44 bi-weekly commencing June 20, 2009. In addition, the decree reflects that he is obligated to pay half of the daycare expenses for his three dependent children. He also attaches a handwritten agreement reflecting his agreement to pay child support and contribute half of the total daycare expenses, and provide assistance with other items for the children. Further, he attaches a signed, sworn statement from his former spouse attesting to the fact that he provided child support in the amount of \$1,470.00 per month in the year prior to January 15, 2010.

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 by allotment. The additional documentary evidence provided by the member reflects that he provided child support during the period January 2009 through January 2010, in the amount of \$17,640.00 (\$1,470.00 per month for 12 months). Therefore, we waive the remaining \$14,970.35.

Conclusion

We hereby waive the remaining \$14,970.35. 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: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board