

DATE: October 27, 2011

In Re:)

[REDACTED])

) Claims Case No. 2011-WV-040411.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt that arises due to the repayment of an advance housing allowance payment for a security deposit cannot be considered for waiver under 10 U.S.C. § 2774 if the advance payment was proper when made. The fact that a debt resulted merely because of a decline in exchange rates between the dollar and the local currency does not make the advance erroneous if it was not otherwise erroneous when paid.

DECISION

A member of the United States Air Force requests reconsideration of the September 19, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-040411. In that decision this Office determined that the member's request could not be considered under the provisions of 10 U.S.C. § 2774.

Background

On November 28, 2007, incident to an overseas permanent change of station (PCS), the member filled out a *Request to Receive and/or Extend Repayment of an Advanced Housing Allowance*, AF Form 1039. On that form he requested an advance payment of housing allowance for security deposit in the amount of \$10,200.00. The member terminated his lease on November 28, 2008, and received his security deposit back from his landlord. The member was then obligated to return to the government the amount that he received for the security deposit.

The AF Form 1039, Block 5, *Certification by Member Requesting Advance Housing Allowance*, contains the following:

a. I certify that I have read and understand the following policies and will abide by them as they pertain to me. . . .

(4) Repayment of an advance housing allowance must be completed prior to a member's permanent change of station (PCSS) or at the end of the member's tour of duty at the station concerned.

(5) By accepting this advance housing allowance, I authorize an offset from my pay account to collect such debt when full repayment is not made for any unliquidated amount that is due and payable.

(a) (CONUS) . . .

(b) (OVERSEAS) I also agree to repay immediately all monies received by me from the landlord when vacating the housing for which this advance was made to the extent that the advance housing allowance has not been previously repaid. I agree to repay any remaining balance of the advance housing allowance not returned by the landlord in full or monthly installments.

It appears from the member's AF 1039 that he requested repayment over 30 months, but the member states that repayment was effected in 12 months from January to December 2009. In the appeal decision, the adjudicator noted that by requesting the advance housing allowance for the security deposit, the member was on notice that he was obligated to repay the government the advance payment he received for the security deposit in the amount of \$10,200.00.

On April 5, 2010, the member submitted a DD Form 2789, *Waiver/Remission of Indebtedness Application*, and listed the debt amount as \$2,786.65. Therein is the confusion of this claim. The member has submitted a waiver application, when apparently from his correspondence it appears he is making a claim against the Government in the amount of \$2,786.65. The member contends that while he has repaid the \$10,200.00, due to currency fluctuations, \$2,786.65 is the amount which he has in essence overpaid and which should be returned to him. The member cites paragraph U10028(C)(6) of Volume 1 of the Joint Federal Travel Regulations (JFTR) as authority for his claim. The adjudicator determined that the \$10,200.00 could not be considered for waiver under 10 U.S.C. § 2774, as the payment was proper when made. As to the \$2,786.65, the adjudicator determined under the waiver statute this also could not be considered; however, she directed the member to his finance office to pursue the matter as a claim if he believed he was entitled to reimbursement.

In the member's request for reconsideration, the member indicates that he has attempted to pursue this matter through his finance office and they would not process the claim. He states that they directed him to the process involving this Office. He also indicates that he believes there is confusion, as he is not asking for waiver; he is asking for the return of the \$2,786.65 he believes he should never have had to repay.

Discussion

Under the provisions of 10 U.S.C. § 2774, we have the authority to waive a member's liability for debts arising from erroneous payments of travel expenses, when collection would be against equity and good conscience and not in the best interests of the United States. This waiver

authority, however, applies only to claims arising out of an “erroneous payment.” The advance payment for the security deposit is authorized by 37 U.S.C. § 403(c)(3). It states as follows:

(3)(A) In the case of a member of the uniformed services authorized to receive an allowance under paragraph (1), the Secretary concerned may make a lump-sum payment to the member for required deposits and advance rent, and expenses relating thereto, that are—

(i) incurred by the member in occupying private housing outside the United States; and

(ii) authorized or approved under regulations prescribed by the Secretary concerned.

(B) Expenses for which a member may be reimbursed under this paragraph may include losses relating to housing that are sustained by the member as a result of fluctuations in the relative value of the currencies of the United States and the foreign country in which the housing is located.

(C) The Secretary concerned shall recoup the full amount of any deposit or advance rent payments made by the Secretary under subparagraph (A), including any gain resulting from currency fluctuations between the time of payment and time of recoupment.

It is clear that the advance housing allowance payment was proper when made and is, therefore, not an erroneous payment. Under the terms of the waiver statute, it cannot be considered for waiver. The member indicates that he is not requesting waiver, but rather is making a claim. He bases the authority for that on 1 JTFR ¶ U10028(C)(6), which states:

Currency Fluctuation Effects. The Service concerned absorbs any loss due to currency fluctuations when liquidating advance security deposits. The member must pay to the Service any gains due to currency fluctuations. These currency protection procedures for security deposits apply without regard to the provisions for protection of rent advances in par. U10028-D.

Formerly, if the currency fluctuations caused the member to have significant losses, the burden was on the member. *See* DOHA Claims Case No. 02010906 (February 15, 2002). Now if there is a loss, there is some relief for service members. Conversely, if the currency fluctuations result in any gains from the transaction, the gains are due the government not the member. We note that currency losses/gains are to be calculated according to Service regulations.

Generally, this Office does not consider a claim made in the form of a waiver request, and that is our policy as regards this claim. The member has indicated that he has concerns regarding the processing of advance security deposits OCONUS. We have no authority in this matter. This is a matter for the Service concerned, and the record indicates the member’s Service has been informed.

Conclusion

The request for reconsideration is denied. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in the matter of waiver.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Gregg A. Cervi
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board