

DATE: December 20, 2011

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In Re: )  
          [REDACTED] ) Claims Case No. 2011-WV-051702.2  
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Claimant \_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When a member is aware or should be aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

**DECISION**

A former member of the U.S. Army requests reconsideration of the November 30, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-051702. In that decision, DOHA denied waiver of the government’s claim in the amount of \$1,199.39.

**Background**

The record shows that on July 25, 2006, the member completed an *Application for Do It Yourself Move and Counseling Checklist*, DD Form 2278. In connection with his Do It Yourself Move (DITY), the member received a travel advance payment on July 28, 2006, in the amount of \$1,199.39. When the member submitted his travel claim for settlement, the Defense Finance and Accounting Service (DFAS) determined that his authorized expenses were \$1,638.40. Since the member had received a travel advance payment in the amount of \$1,199.39, he was entitled to a

final payment of \$439.01. However, due to an administrative error, DFAS failed to consider the travel advance payment, and erroneously paid the member \$1,268.59 as his final travel settlement on September 18, 2006, causing an overpayment of \$829.58 (\$1,268.59 - \$439.01). In addition, the member erroneously received a travel payment in the amount of \$369.81 on March 1, 2007. Thus, the member was overpaid \$1,199.39 (\$829.58 + \$369.81).

In the appeal decision, the DOHA adjudicator noted that the member's constructive costs on his DD Form 2278 were listed as \$2,104.20. The adjudicator determined that although the member may have correctly listed the advance payment on his travel voucher, he should have known that he was overpaid because the payments he received for his DITY move exceeded his estimated costs.

In his request for reconsideration, the member states that he was entitled to the \$369.81 payment he received on March 1, 2007. He states he received this payment as reimbursement for expenses he incurred for the first six months (August 2006 through February 2007) of rent on a storage unit he obtained pursuant to his DITY move. He states that he submitted the necessary receipts at the end of the six-month period. Therefore, he contends that the amount of the claim against him should be \$869.58. He further states that taking into consideration the payment he received on September 18, 2006, in the amount of \$1,268.59, plus the advance travel payment of \$1,199.39, the amount he was overpaid only marginally exceeded his estimated constructive cost of \$2,104.20. He states that given this marginal amount, he was unaware he was overpaid.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive the government's claim for repayment of erroneous payments of travel expenses to a member if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. A waiver is generally not appropriate when a recipient of a significant, unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5. It is not against equity and good conscience to deny waiver when a reasonable person would have suspected that he was receiving payments in excess of his entitlements. *See* Instruction ¶ E4.1.4. A member is considered to be aware of an erroneous payment when he possesses information which reasonably suggests that the validity of the payment may be in question. *See* DOHA Claims Case No. 06122608 (January 4, 2007), and DOHA Claims Case No. 06111302 (November 24, 2006).

In this case, the member received documentation, specifically the DD Form 2278, reflecting an estimated constructive cost of \$2,104.20 for his DITY move. The DD Form 2278 also reflects that of the \$2,104.20, \$1,199.39 would be paid to the member as an advance travel payment. The member subsequently received this payment on July 28, 2006. Therefore, when he received \$1,268.59 on September 18, 2006, in final settlement of his travel claim, he should have questioned his entitlement to it since he already received \$1,199.39. Based on the estimate, he could have only reasonably expected to receive an additional \$904.81 (\$2,104.20 - \$1,199.39). Under these circumstances, waiver is precluded because he failed to make inquiries or bring the matter to the attention of the appropriate authorities. In the meantime, he did not acquire title to the questionable payments and should have held the amount until the government asked for repayment.

As for the payment of \$369.81 the member received on March 1, 2007, the record reflects that this payment was erroneous. If the member wishes to contest the validity of the underlying debt, he should contact DFAS. If he is not satisfied with their determination, he may pursue the matter as a claim under DoD Instruction 1340.21 (May 12, 2004). Under DoD Instruction 1340.21, the claimant must prove, by clear and convincing evidence, on the written record, that the United States is liable to the claimant for the amount claimed.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the November 30, 2011, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member's request for waiver under 10 U.S.C. § 2774.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board