

KEYWORDS: Waiver of Indebtedness

DIGEST: Under 10 U.S.C. § 2274, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payment of pay and allowances made to members and former members, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the member.

CASENO: 2012-WV-042406.2

DATE: 09/25/2012

DATE: September 25, 2012

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2012-WV-042406.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2274, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payment of pay and allowances made to members and former members, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the member.

DECISION

A member of the United States Navy requests reconsideration of the June 29, 2012, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2012-WV-042406. In that decision our Office denied waiver of \$17,418.43, the amount of the debt the member owes the government.

Background

The record shows that the member was receiving basic allowance for housing at the dependent rate (BAH-D). On September 2, 2005, the member's spouse died. As a result, he was no longer entitled to receive BAH-D. However, due to an administrative error, the member erroneously continued to receive BAH-D from September 3, 2005, through September 2, 2010, causing an overpayment of \$95,411.16. During this period the member was entitled to receive BAH at the single rate (BAH-S) in the amount of \$75,992.73. This was applied to the overpayment reducing it to \$17,418.43, which is the amount this Office considered for waiver.

The member stated that he was assured that he was entitled to receive BAH-D since his spouse had passed away while on active duty. He contends that this did not seem inaccurate as he was also receiving Dependency and Indemnity Compensation (DIC) after her death. He points to the fact that at each transfer he updated his personnel documents, known as page 2 and page 4. The adjudicator determined that the member had not provided any documentation to support his statement that he had notified finance officials and command officials of his new situation, and had received assurances that he was being correctly paid. The member states that he was unaware of the overpayment until a new marriage necessitated updating his records. At that time, he brought in his new marriage certificate and was informed that he had been receiving BAH-D erroneously.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive a claim for erroneous payment of pay and allowances made to members and former members, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member. *See Standards for Waiver Determinations*, DoD Instruction (hereinafter Instruction) 1340.23, ¶ E4.1.2 (February 14, 2006), codified at 32 C.F.R. Part 284, Appendix B.

The member stated that he alerted finance representatives to the possible error. Our decisions and those of the Comptroller General have consistently held that there is no basis for waiver unless the official(s) providing the faulty advice indicating that the member was entitled to what he received are identified, and the member's version of the events is corroborated in the written record. *See* DOHA Claims Case No. 02120917 (December 20, 2002); DOHA Claims Case No. 01010906 (March 8, 2001); DOHA Claims Case No. 97042817 (July 1, 1997); and Comptroller General decision B-256417, July 22, 1994. The adjudicator in the decision pointed out to the member that he had not provided any signed official statements or documentation stating whom he talked to, what he asked or said, nor what he was told. In his request for reconsideration, the member lists individuals that he contends gave him the faulty advice. This Office does not have investigative authority. All information upon which this Office may decide whether to grant waiver must be within the confines of the record. The member has not submitted additional information which would justify overturning the adjudicator's decision.

As a senior enlisted member who had previously received both BAH-S and BAH-D, the member should have been aware of the purpose of the entitlements. During the period of overpayment, the member's spouse was listed as his dependent although she had since passed away. Additionally, the zip code attributed to his housing allowance was the zip code of his deceased wife's residence. This Office believes that the member should have pursued the matter further, given the inconsistencies on his record. Our Office has consistently held that the purpose of BAH-D is to help a member provide support for his dependents. Since there were no other dependents, there is no indication that the funds were used for their intended purpose. In light of these circumstances, this Office believes that collection of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interest of the United States. See DOHA Claims Case No. 06113001 (December 13, 2006), DOHA Claims Case No. 02072315 (September 17, 2002), and DOHA Claims Case No. 01061503 (July 23, 2001).

Conclusion

The member's request for reconsideration is denied and we affirm the June 29, 2012, decision to deny waiver in the amount of \$17,418.43. In accordance with the Instruction, ¶ 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

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Catherine M. Engstrom
Member, Claims Appeals Board

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Natalie Lewis Bley
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