

KEYWORDS: waiver of indebtedness

DIGEST: A member's debt resulting from the government's payment of the entire amount charged for the member's household goods storage and shipment, including weight in excess of the authorized weight, cannot be considered for waiver under 10 U.S.C. § 2774 because the debt is not the result of an erroneous payment.

CASENO: 2012-WV-061505.2

DATE: 9/13/2012

DATE: September 13, 2012

In Re:)
) [REDACTED])
)) Claims Case No. 2012-WV-061505.2
))
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member's debt resulting from the government's payment of the entire amount charged for the member's household goods storage and shipment, including weight in excess of the authorized weight, cannot be considered for waiver under 10 U.S.C. § 2774 because the debt is not the result of an erroneous payment.

DECISION

A member requests reconsideration of the July 31, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-061505, in which

DOHA determined the claim could not be considered for waiver because it did not represent an erroneous payment.

Background

On December 5, 2005, the member was issued permanent change of station (PCS) orders transferring him from a base in the United States to a base overseas. In connection with his PCS, he was authorized non-temporary storage of 500 pounds of household goods. On March 28, 2007, the member was issued PCS orders transferring him from overseas back to the United States. In connection with his PCS, he was authorized the shipment of 7,000 pounds of household goods. However, the member stored 783 pounds of household goods and shipped 7,686 pounds of household goods. As a result, he exceeded his authorized storage weight by 283 pounds and his shipping allowance by 686 pounds. The storage and the shipping of the excess pounds resulted in an additional charge of \$4,060.08, which, in accordance with long-established practice, was paid by the government to the warehouseman and the carrier and then charged to the member.

In his request for reconsideration, the member states the travel management office (TMO) notified him on short notice that he was not allowed to take his motorcycle, washer and dryer, lawn mower and trailer overseas. He states that the TMO told him that these items could be stored in a warehouse at government expense. He states that he was never notified that he could only store 500 pounds of household goods. He states that had he known he was over the weight limit, he would have sold some items. In addition, he states that his authorized weight should have been 9,000 pounds, instead of 7,000 pounds because he was married when he left the base overseas. He attaches a copy of his marriage certificate. He further states that he was never notified that he was only entitled to ship 7,000 pounds.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive the collection of erroneous payments of travel allowances, when collection would be against equity and good conscience, and not in the best interest of the United States. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. In order to be considered for waiver under 10 U.S.C. § 2774, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.

It is standard government practice to pay the total transportation cost and other charges applicable to any excess weight that exceeds a member's household goods weight allowance and collect reimbursement from the member. *See* ¶ U5340 of Volume 1 of the Joint Federal Travel Regulations (JFTR). Under these circumstances, the debt does not result from an "erroneous" payment made to, or on behalf of, the member. It is a valid payment, and there has been no erroneous payment for the purposes of the waiver statute. The government was billed for the

services rendered and paid the bills in accordance with its obligation to the company or companies involved. *See* DOHA Claims Case No. 97021019 (March 3, 1997) and B-245112, B-245112.2, Mar. 30, 1992. Therefore, the payment of excess weight charges by the government in accordance with this practice is not erroneous, and claims against a member arising from such payments may not be considered for waiver under 10 U.S.C. § 2774.

In this case, the payments were made in accordance with standard government practice. The payments made were not erroneous and there was no error on the part of the government in making the payments. To the extent that the member received incorrect advice, as a general rule, the government is neither bound nor estopped by the erroneous advice or unauthorized acts of its officers, agents or employees even though committed in the performance of their official duties. *See* DOHA Claims Case No. 2011-WV-050306.3 (April 26, 2012). As for the member's assertion that he was entitled to shipment of 9,000 pounds because he was married, our authority in this matter is restricted to a consideration of whether the member's debt may be waived under the provisions of 10 U.S.C. § 2774. Under the waiver statute, the debt cannot be considered for waiver. However, our decision under the waiver statute does not preclude the member from pursuing this matter as a claim.

Conclusion

The member's request for relief is denied, and we affirm the July 31, 2012, appeal decision. In accordance with 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