

DATE: June 20, 2014

In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-012303.3

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Title 10, United States Code, § 2774 provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States.

DECISION

A retired Navy member requests reconsideration of the April 24, 2014, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-012303.2. In that decision, this Office denied waiver of \$36,816.09.

Background

The member requested waiver of \$18,295.43; however, the Defense Finance and Accounting Service (DFAS) has advised this Office that the gross amount of the debt is \$36,816.09, which is the amount that we will consider. DFAS has advised that the member received \$36,816.09 in overseas housing allowance during the period November 10, 2005, through February 28, 2007, at the dependent rate (OHA-D). It was later determined that the member was not entitled to OHA-D, but was entitled to receive OHA at the single rate (OHA-S). Therefore, the member became indebted for the erroneous receipt of OHA-D in the amount of \$36,816.09 during the period November 10, 2005, through February 28, 2007. DFAS determined that the member was due OHA-S in the amount of \$12,120.06 for the period November 10, 2005, through April 30, 2007. Instead of applying this amount to the OHA-D overpayment, the member was paid the \$12,120.06.

In September 2007 the member accepted a pre-trial agreement and pled guilty at a summary court-martial. The member pled guilty to a number of charges involving misconduct; such as intent to deceive, being derelict in the performance of his duties, and making false official statements. The member pled guilty to stealing military property, OHA, in the amount of \$5,163.00 during the period from December 2006 through February 2007. The member also pled guilty to stealing government property, Basic Housing Allowance (BHA), in the amount of \$6,126.00 during the period from August 2005 through November 2005.

Discussion

Title 10, United States Code, § 2774 provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good on the part of the member or any other person having an interest in obtaining a waiver.

The member's main argument is that he questions the legality of DFAS' right to collect the debt. He states, "The evidence at Court Martial appear[s] to support a debt of only \$11,289.09 which has been paid. It is not clear why [DFAS] considers a debt outstanding." The member has previously been informed by DFAS and by the adjudicator in this Office that when he pled guilty, he agreed to a criminal liability. This was not an agreement for the amount for which the member had a civil liability. His plea was meant to close his court-martial proceedings, but there is no indication that it was meant to be complete restitution for his debt. While the member was tried in a judicial setting, the judicial hearing has no bearing on administrative actions. The United States Navy established the debt against the member, and DFAS is charged with collecting the debts for the respective services. If the member has questions about the debt, he should inquire of the Navy or DFAS; however, he has already had two audits.

The member listed numerous arguments against his responsibility for the debt, and the adjudicator responded to them all. Foremost among the responses is that the member pled guilty to being derelict in his duties because he willfully failed to notify proper authorities that the lease agreement submitted for the purpose of collecting OHA was false when he knew the rental amount to be false. Since there is no indication in the record that the member notified any pay officials, his commander, or supervisory chain of the false lease amount prior to being questioned about it by investigating officials on February 2, 2007, waiver is not appropriate. Therefore, we believe it would not be against equity and good conscience, or contrary to the best interests of the United States, to waive the erroneous payment of OHA-D that he received from November 5, 2005, through February 28, 2007. *See* DOHA Claims Case No. 2012-WV-082016.2 (March 19, 2013); DOHA Claims Case No. 2009-WV-062203.3 (February 8, 2011); and DOHA Claims Case No. 02050612 (May 14, 2002).

The member was still married to his wife at the time in question. Submitting the lease with his wife's signature on it made the member responsible for its authenticity, as would be the

case for any document he submitted to Navy officials. He should have verified its authenticity before he submitted it. If he knew it was false or doubted its genuineness in any way, he should not have submitted it. As a senior enlisted member in the Navy with over 21 years of service, he should have been aware of that responsibility, no matter what advice he may have received when he submitted it and no matter how long the subsequent investigation lasted.

The member also asserts that because his spouse had her own Navy Federal Credit Union (NFCU) cue card, she withdrew the funds on paydays and he “never saw one cent of this money.” DFAS directed the member’s pay to the account number he provided. The fact that the member’s wife had access to the account and spent some or all of the money in it has no bearing on the member’s responsibility to repay his debt to DFAS or on the availability of waiver.

The member presented no new evidence in his request for reconsideration. Instead, he resubmitted a partial record of a decision by the Board for Correction of Naval Records dated September 27, 2006. It is difficult to evaluate the significance of the Correction Board decision without the complete record. The portion of the record of the Correction Board that we have been provided would seem to be irrelevant to the issue at hand as it discusses housing entitlements in Hawaii rather than the Philippines. In any event, the subsequent investigation and court-martial action would seem to diminish the weight to be accorded the Correction Board decision for purposes of this Reconsideration Decision regarding waiver.

Conclusion

The Appeal Decision of April 24, 2014, is affirmed. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Jean E. Smallin
Chairman, Claims Appeals Board

William S. Fields
Member, Claims Appeals Board

Natalie Lewis Bley
Member, Claims Appeals Board