

DATE: January 30, 2014

In Re:)

[REDACTED])

) Claims Case No. 2013-WV-031101.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments made to a member if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. When a member is 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 retain them for eventual repayment to the government.

DECISION

A retired member of the United States Air Force requests reconsideration of the November 15, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-031101.

Background

The member was receiving disability compensation from the Department of Veterans Affairs (VA). He was placed on the Temporary Disability Retirement List (TDRL), and his disability retirement was effective May 29, 2011. Due to an administrative error, when the member's retired pay was established, the Defense Finance and Accounting Service (DFAS) failed to reduce his military retired pay by the required amount of VA compensation. As a result, the member was overpaid \$18,794.80 from May 29, 2011, through April 30, 2012. The member was notified he was being overpaid on April 25, 2012, prior to receipt of his retired pay for April 2012, which he received on May 1, 2012.

In his reconsideration request of DOHA's denial of his waiver request, the member states that he did not know he was being overpaid. He attaches a signed statement from an official who assisted the member in filling out his retirement paperwork. The statement supports the member's version of events and reflects that the member was incorrectly advised about his entitlements.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments to a member if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member.

In this case, the record reflects that the member did not know he was being overpaid until he was notified on April 25, 2012. Under the circumstances, it is against equity and good conscience to require collection of the erroneous payments the member received prior to April 25, 2012. Therefore, the erroneous retired pay paid to the member for the period May 29, 2011, through March 31, 2012, in the amount of \$17,243.13 is hereby waived. However, the amount erroneously paid to the member for the period April 1, 2012, through April 30, 2012, in the amount of \$1,551.67, which he received after the date he knew of the overpayment is not appropriate for waiver. *See* Comptroller decisions B-235159, Feb. 7, 1990, and B-188107, Feb. 16, 1977.

Conclusion

We hereby waive \$17,243.13 and deny waiver in the amount of \$1,551.67. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense.

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