



was not entitled to receive BAH-D based on Hawaii, but instead was due BAH-D based on her home of record in Florida. Since the BAH-D rate for Hawaii was higher than the BAH-D rate for Florida, the member was overpaid \$4,512.00 from May 1, 2013, through August 31, 2013.

When the error in the member's BAH-D rate was corrected in September 2013, the member's pay account was erroneously retroactively credited \$8,400.00 for family separation allowance (FSA) for the period May 1, 2013, through August 31, 2013, on September 9, 2013. However, on September 10, 2013, the erroneous \$8,400.00 FSA credit to her account was collected in full. Although this occurred, the Defense Finance and Accounting Service (DFAS) requested that DOHA consider for waiver the gross amount of \$12,912.00 (\$4,512.00 BAH-D + \$8,400.00 FSA).

In the appeal decision, the DOHA adjudicator agreed with DFAS's recommendation to waive the overpayment of BAH-D in the amount of \$4,512.00, and deny waiver of the erroneous credit of FSA in the amount of \$8,400.00. The adjudicator determined that since the employee stated that she became aware she was overpaid on September 9, 2013, it would not be against equity and good conscience to deny the erroneous FSA payment she received on that same day. Further, the adjudicator noted that when an agency's prompt notification of an overpayment to a recipient precludes the recipient from relying on the accuracy of the payment to her detriment, waiver is not appropriate.

In her request for reconsideration, the member states that in August 2013 she was advised by her PSD that a BAH change made in March 2013 affected her pay account. She states that she was told that a PSD disbursing officer had erroneously made edits to her BAH zip code on her master military pay account (MMPA). She states that she was later told that when the disbursing officer tried to undo the error, the MMPA system did not allow him to reverse the change. She further states that she was then told to file a waiver of indebtedness for the overpayment of BAH-D in the amount of \$5,640.00, which she did on September 11, 2013. Apparently the \$5,640.00 debt reflects overpayments of BAH-D for the period May 1, 2013, through September 30, 2013, when her orders ended. She states that a decision had been made to "grandfather" in her entitlement to BAH-D based on Hawaii until the end of September 30, 2013. She attaches an email from a Records Officer of the Joint Interagency Task Force West (JITFW) of the U.S. Pacific Command dated February 14, 2014, stating that the full amount of waiver should be approved in the amount of \$5,640.00. The Records Officer states that the difference between \$5,640.00 and \$4,512.00 is \$1,128.00, which represents the difference in the BAH-D for Hawaii and Florida for the month of September 2013. The member requests that this amount be waived since she was told that she would be entitled to BAH-D at the Hawaii rate through September 30, 2013. The member further states that she was told her debt would be suspended until the waiver was approved by DFAS. She states that although she came off her orders on September 30, 2013, her PSD did not submit her waiver until February 2014. The

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also noted that the member's April 2013 LES reflected that she was being paid BAH-D based on the zip code for Pearl Harbor, Hawaii. In the member's request for reconsideration, the member submits an audit completed by her PSD on October 29, 2010, reflecting that she was entitled to receive BAH-D based on Pearl Harbor. Therefore, it appears that the member has been receiving BAH-D based on Pearl Harbor since 2010 after her husband moved to Hawaii. As pointed out by the adjudicator, it is unclear why the debt period is only May 2013 through September 2013.

member states that DFAS then returned her waiver request because she did not include the \$8,400.00 overpayment created when the disbursing officer tried to correct her pay account. She states that the disbursing officer was at fault for erroneously creating the \$8,400.00 debt on her account. Therefore, she also requests that this amount be removed from her DFAS military pay account.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive repayment of erroneous payments of military pay and allowances to members of the uniformed services if repayment would be against equity and good conscience and not in the best interest 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 erroneous retroactive payment of FSA in the amount of \$8,400.00 was made as a result of an administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the member's part. However, a member is considered to be at least partially at fault, and waiver is precluded when, in light of all the circumstances, it is determined that she should have known she was being overpaid. The standard we employ to determine fault is whether a reasonable person knew or should have known that she was receiving payments in excess of her entitlements. Waiver is not appropriate when a member is aware that she is being overpaid or had no reasonable expectation of payment in the amount received. A member is considered to be aware of an erroneous payment when she possesses information which reasonably suggests that the validity of the payment may be in question. Once a member receives information that brings the validity of the payment into question, she has a duty to hold the amount received for eventual repayment.

Our office properly waived the overpayment of BAH-D the member received during the period May 1, 2013, through August 31, 2013, in the amount of \$4,512.00. There is no indication in the record that the member was overpaid BAH-D in the amount of \$1,128.00 for September 2013. In this regard, DFAS established the member's debt in the gross amount of \$12,912.00 (\$4,512.00 BAH-D + \$8,400.00 FSA). The establishment of a debt amount is a matter primarily for administrative determination, and our Office will ordinarily not question a determination in the absence of clear error. DOHA's authority in this matter pertains to the availability of the equitable remedy of waiver. Although the member may have been advised that she had been granted BAH-D based on Hawaii through the end of her orders, this does not provide a basis for waiver in an amount above what she was overpaid for BAH-D, especially since waiver was granted in full for the erroneous payments of BAH-D she received in the amount of \$4,512.00. If the member is claiming she is entitled to receive an additional \$1,128.00 for BAH-D in September 2013 because of being "grandfathered," she should contact her paying office and DFAS.

As for the debt in the amount of \$8,400.00 for FSA credited to the member's account on September 9, 2013, this amount was also properly denied by the adjudicator. As set forth in the appeal decision, the member was aware that she was being overpaid on September 9, 2013. Therefore, waiver of the credit in the amount of \$8,400.00 made to her account on the same date is not appropriate. In addition, this amount was subsequently collected in full on September 10,

2013. It is not against equity and good conscience to recover an erroneous payment when the government makes prompt notification, as it did here. *See* DOHA Claims Case No. 06071717 (July 31, 2006); DOHA Claims Case No. 03111712 (December 2, 2003); and DOHA Claims Case No. 98062401 (October 13, 1998).

### **Conclusion**

The member's request for relief is denied, and we affirm the June 29, 2015, 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