

DATE: April 28, 2016

In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-062902.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member is aware, or reasonably should be aware, that he is receiving pay in excess of the proper entitlement, he has a duty to notify an appropriate official and to set aside funds for eventual repayment.

DECISION

A member of the Kansas Army National Guard (KSARNG) who was on Active Guard and Reserve (AGR) duty requests reconsideration of an April 7, 2016, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-062902. In that decision, DOHA waived in part the collection of a debt owed by the member. The member seeks waiver of the remaining indebtedness.

Background

When the member accessed into the AGR system from the KSARNG in April 1997, his Pay Entry Base Date (PEBD) was incorrectly entered as October 12, 1984, instead of February 9, 1994. As a result, the member was erroneously paid as a Sergeant with over twelve years of service, instead of a Sergeant with over three years of service. This administrative error caused the member to be overpaid \$13,573.64 from April 1, 1997, through March 31, 2000.

The record shows that when the member separated from service on October 5, 2005, he was entitled to receive \$771.53 in net pay. However, due to an administrative error, the member's pay records were not updated to reflect that he was separated on October 5, 2005. As a result, the member continued to receive active duty pay through November 15, 2005. He received a mid-month pay for October 2005 in the amount of \$1,804.65; an end-of-month pay for October 2005 in the amount of \$1,804.62; and a mid-month pay for November 2005 in the

amount of \$1,804.65 for a total of \$5,413.92. Since the member was only due \$771.53, he was overpaid \$4,642.39.

Discussion

Section 2774 of title 10, United States Code, 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 interest of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other persons having an interest in obtaining the waiver.

The member began receiving his Leave and Earnings Statements (LES) in August 1999. Previously, the member's LES were being sent to another individual in the KSARNG with the same name. The adjudicator determined that the member acted in good faith in accepting the overpayment which occurred during the period April 1, 1997, through July 31, 1999, in the amount of \$8,935.36, and properly waived that amount.

The adjudicator determined that the overpayment in the amount of \$4,638.28 which occurred during the period August 1, 1999, through May 31, 2000, should be denied, and the Board agrees with that determination. Once the member began receiving his LES in August 1999, the member should have been alerted to the fact that the years of service reflected on his LES at that time amounted to 15 years instead of 5 years of service, and his PEBD was listed as October 12, 1984, instead of February 9, 1994. We have consistently held that when a member is aware or reasonably should be aware that he is receiving pay in excess of this proper entitlement, he has a duty to retain such amounts for subsequent refund to the government, and to make inquiry to the appropriate official. Additionally, we cannot stress too highly the importance of careful review by each member of the LES provided by the agency. Since LES are issued to members in order that they can verify the accuracy of their pay, we have consistently held that a member who receives an LES has a duty to carefully examine them and report any error. Therefore, we believe that collection of this portion of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States. *See* DOHA Claims Case No. 2012-WV-062502.2 (September 20, 2012), and DOHA Claims Case No. 2009-WV-030404.2 (October 1, 2009).

The Board also agrees with the adjudicator's determination that the remaining overpayment of \$4,642.39 should be denied. Since the member was separated on October 5, 2005, he knew or reasonably should have known that he was no longer entitled to receive mid-month and end-of-month payments through November 15, 2005, for basic pay, Basic Allowance for Subsistence and Basic Allowance for Housing. Under the circumstances, we believe it would not be against equity and good conscience to deny this portion of the claim. *See* DOHA Claims Case No. 2015-WV-042003.2 (December 7, 2015); DOHA Claims Case No. 2013-WV-051403.2 (March 20, 2014); DOHA Claims Case No.07022701 (March 1, 2007); and DOHA Claims Case No. 00022208 (May 26, 2000).

In his request for reconsideration, the member presents no new evidence. However, he appears to be confused by some information that he received earlier in the process as to why the debt increased by the additional amount of \$4,642.39. He was told by a Staff Sergeant at his unit that the increase was probably due to interest on the initial debt. This was incorrect. There was no interest added to the initial debt. While auditing the debt, DFAS found the extra active duty payments over the period October 15, 2005, through November 15, 2005, and explained them in their June 25, 2015, administrative report. The adjudicator also explained the payments in her letter dated April 7, 2016. These extra active duty payments after separation from active duty have been denied. Should the member have any additional questions concerning this portion of the debt, he should contact DFAS for further explanation.

Conclusion

The member's request for reconsideration is denied, and the April 7, 2016 appeal decision is affirmed. The amount of \$8,935.36 has been waived, and we continue to deny the amount of \$9,280.67. In accordance with Department of Defense Instruction 1340.23 ¶ 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

///Original Signed///

Gregg A. Cervi
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board