

DATE: February 14, 2017

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2016-WV-061404.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2774, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payments of pay and allowances made to members, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the member.

DECISION

A member of the U.S. Coast Guard requests reconsideration of the November 30, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-061404.

Background

In 1989 the member enlisted in the Coast Guard under the Delayed Enlistment Program. During the period September 25, 1989, through July 7, 1991, the member served on Regular Active Duty, and the time was creditable for pay purposes. During the period July 8, 1991, through May 23, 1995, the member was a Cadet at the Coast Guard Academy. His time served as a Cadet was not creditable for pay purposes. On May 24, 1995, the member became a commissioned officer in the Coast Guard, and his Pay Entry Base Date (PEBD) and Active Duty Base Date (ADBBD) were correctly established as August 11, 1993, which properly accounted for the one year, nine months and 13 days he served on Regular Active Duty. In March 2007 the Coast Guard Pay and Personnel Center (PPC) conducted an audit of the member's creditable service time and pay account. Due to an administrative error, in March 2007 the member's

PEBD was erroneously changed to August 11, 1992, causing his pay entitlements to be erroneously computed based on over 14 years of military service, instead of 13 years of military service. In April 2007 the PPC issued the member his first Statement of Creditable Service (SOCS) and Statement of Creditable Sea Service (SCSS). The SOCS correctly listed the member's period of enlisted service on Regular Active Duty as September 25, 1989, through July 7, 1991, but incorrectly calculated the time served as two years, nine months and 13 days instead of one year, nine months and 13 days. As a result of the erroneous change to the member's PEBD, the member's pay and allowances were miscalculated causing him to be overpaid \$23,519.69.¹

In the appeal decision, the DOHA adjudicator upheld the Coast Guard's denial of the member's waiver request. The adjudicator noted the error on the SOCS. She cited the long standing principle that if a member is furnished with documentation which, if reviewed, would cause a reasonably prudent person to be aware or suspect the existence of an error, but the member fails to review the document carefully, or otherwise fails to take corrective action, the member is not without fault and waiver is precluded. She also noted that although the member stated that the error on the SOCS was not readily apparent, he did not provide any signed statements from a member of his Personnel Service Center (PSC) to support his assertion that he was informed he was owed another year of service.

In the member's reconsideration request, he attaches the memorandum he received from his PSC on April 2, 2007, changing his PEBD. This memorandum cites two attachments which the member also includes. One is the SOCS and the other is the SCSS. He also names the individuals from the PSC who assured him he was entitled to another year of service. He attaches a statement from the Chief Yeoman at his administrative office. She states that she has over 18 years of experience in her rating and only after an extensive review of the member's file, was she eventually able to discover the error in the PEBD.

Discussion

Under 10 U.S.C. § 2774, we have authority to waive repayment of erroneous payments of military pay and allowances if repayment 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. *See* DoD Instruction 1340.23 (Instruction) (February 14, 2006).

We have consistently held that there is no basis for waiver unless the official(s) providing the faulty advice indicating that the member was entitled to what he received are identified and the member's version of events is corroborated by the written record. *See* DOHA Claims Case No. 2013-WV-011503.2 (July 24, 2013).

¹The member erroneously received a retroactive payment of \$14,088.90 for the period August 8, 1992, through February 28, 2007. In addition, the member's pay and allowances continued to be miscalculated during the period March 1, 2007, through August 10, 2015.

In this case, the member was contacted by officials from his local pay office and the PPC concerning an audit to his PEBD. He was told that his creditable service time was being recalculated based on his enlistment status prior to 1995. He was then advised by memorandum in April 2007 that after the audit, his PEBD was changed. The member had never received a SOCS or SCSS until his PEBD was changed in 2007. The memorandum's attachments included both a SOCS and SCSS. The SCSS had overlapping periods for both his enlisted active duty service and his time in the Coast Guard Academy. Under the circumstances, we believe the member reasonably may have believed that the time spent in the Academy on sea duty was added to his creditable time served. Therefore, we believe the member reasonably may not have been aware that his PEBD was incorrect and acted in good faith in accepting the overpayment in the amount of \$23,519.69.

Conclusion

We hereby waive \$23,519.69. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

Signed: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board