

KEYWORDS: Waiver of Indebtedness

DIGEST: Due to an administrative error, a member was overpaid basic allowance for housing at the dependent rate (BAH-D) and cost of living allowance (COLA). He was unaware he was being overpaid until he was notified on May 4, 2015. Under 10 U.S.C. § 2774, the amounts the member received before notification may be waived. However, the amounts he was paid after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

CASENO: 2016-WV-090601.2

DATE: 12/08/2016

DATE: December 8, 2016

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2016-WV-090601.2
Claimant	)	
	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Due to an administrative error, a member was overpaid basic allowance for housing at the dependent rate (BAH-D) and cost of living allowance (COLA). He was unaware he was being overpaid until he was notified on May 4, 2015. Under 10 U.S.C. § 2774, the amounts the member received before notification may be waived. However, the amounts he was paid after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

**DECISION**

A member of the U.S. Navy requests reconsideration of the November 3, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-

WV-090601. In that decision, DOHA waived a portion of the claim in the amount \$10,472.87, and denied waiver of the remaining \$9,267.62.<sup>1</sup>

## **Background**

On July 11, 2013, the member performed a permanent change of station move from Japan to San Diego, California, and began to properly receive BAH-D based on San Diego for his family. On May 5, 2014, the member requested BAH-D based on his family's location in Mililani, Hawaii, by filing a *Special Request/Authorization* (NAVPERS 1336/3). On May 19, 2014, his request was approved. As a result, the member began receiving BAH-D and COLA based on his family's location in Hawaii. It was later determined that the member was only entitled to receive BAH-D based on his duty location in San Diego. Due to this administrative error, the member became indebted for the erroneous BAH-D and COLA he received. In this regard, during the period May 19, 2014, through June 15, 2015, the member received \$36,513.60 in BAH-D based on Hawaii, but was only entitled to receive \$28,616.10 in BAH-D based on his duty location, causing him to be overpaid \$7,897.50 (\$36,513.60 - \$28,616.10). In addition, during this period, the member erroneously received \$11,842.99 in COLA. Therefore, the member was overpaid \$19,740.49 (\$7,897.50 + \$11,842.99).

The Defense Finance and Accounting Service (DFAS) recommended waiver of a portion of the claim of the erroneous payments of BAH-D and COLA the member received prior to being notified of the error.

In the appeal decision, the DOHA adjudicator waived \$10,472.87 the member erroneously received in COLA during the period May 19, 2014, through April 30, 2015. However, since the member was notified he was being overpaid on May 4, 2015, the adjudicator denied waiver of the \$1,370.12 COLA he erroneously received for the period May 1, 2015, through June 15, 2015. The adjudicator also denied waiver of the \$7,897.50 overpayment of BAH-D because the member did not use this amount for its intended purpose.

In his reconsideration request, the member states that he followed the guidelines provided by his ship's Administrative Officer. He states that he was unaware that he was not entitled to the COLA and BAH-D he received. He states that he has spoken to his chain of command, the ship's Administrative Office and his Personnel Support Detachment (PSD). All agree that the mistake was on their part in authorizing him BAH-D at the Hawaii rate. He states that during the period August 1, 2015, through August 31, 2015, he did not receive any pay due to the indebtedness posted to his leave and earnings statement (LES).

## **Discussion**

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<sup>1</sup>The total amount of the claim was \$19,740.49. The debt consisted of the overpayment of cost of living allowance (COLA) in the amount of \$11,842.99 and the overpayment of basic allowance for housing at the dependent rate (BAH-D) in the amount of \$7,897.50.

Under 10 U.S.C. § 2774, we have 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 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, since the member became aware he was being overpaid on May 4, 2015, prior to receiving his pay for the period May 1, 2015, through June 15, 2015, the adjudicator properly denied the amounts he received for COLA after notification of the error. *See* DOHA Claims Case No. 2013-WV-011503.2 (July 24, 2013). However, we believe that for the same reasons that the adjudicator waived the portion of the COLA the member erroneously received prior to notification, waiver is appropriate for the portion of the BAH-D the member erroneously received during the period May 19, 2014, through April 30, 2015. In this regard, the member reasonably may not have been aware that he was being overpaid BAH-D and acted in good faith in accepting the overpayment of BAH-D during this period. In addition, the record contains documentation reflecting that the member made mortgage payments and paid other utility payments during the period of overpayment prior to notification of the error. Therefore, we waive an additional \$6,894.00 of the erroneous BAH-D payments the member received during the period May 19, 2014, through April 30, 2015. However, since the member became aware he was being overpaid on May 4, 2015, waiver is not appropriate for the BAH-D payments he received after notification in the amount of \$1,003.50. *See* DOHA Claims Case No. 2013-WV-011503.2, *supra*.

### **Conclusion**

We hereby waive an additional \$6,894.00 for a total waiver of \$17,366.87. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

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