

vlink="#551A8B" alink="#FF0000">

DATE: September 28, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00073115

CLAIMS APPEALS BOARD DECISION

DIGEST

The former spouse of a retired Coast Guard member applied for direct payment for child support under the Uniformed Services Former Spouses' Protection Act (USFSPA), supported by a state court order awarding the former spouse \$601 per month as support for both of their children. Under the terms of the application, the former spouse promised to voluntarily reimburse the Coast Guard for any future overpayments that she received from the retired pay account and to promptly notify the Coast Guard if under the supporting court order, a direct payment as child support is no longer effective because the children reached majority. In April 1999, the former spouse certified to the continued minority of her children for purposes of direct payment under the USFSPA, but the younger child became 18 in August 1999. Due to administrative error, the Coast Guard paid the former spouse three additional direct payments (September through November 1999), and the former spouse applied for a waiver of the overpayment under 10 U.S.C. § 2774. Under these circumstances, the former spouse is partially at fault for the overpayment because she was on notice that she might not have a right to direct payment under USFSPA for child support after August 1999.

DECISION

The former spouse of a retired service member appeals the June 30, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00051211, a matter involving her application for waiver of a debt which resulted from the Coast Guard's erroneous overpayment of her former husband's retired pay to her.

Background

The record indicates that the member and his former spouse were divorced on October 28, 1995. The former spouse had been awarded an amount of \$601 per month as child support payments. The former spouse applied to the Coast Guard to have these payments paid to her under the provisions of the Uniformed Services Former Spouses' Protection Act (USFSPA).⁽¹⁾ The right to payment for child support ended when the younger reached majority.⁽²⁾ On August 5, 1999,

the younger child reached her eighteenth birthday, and as a result, the former spouse was no longer entitled to direct payment under the USFSPA for child support. Due to administrative error, the former spouse continued to receive payments for September, October and November 1999, causing an overpayment of \$1,803.

In her *Application for Direct Payments under the Uniformed Services Former Spouses' Protection Act* (CG PPC-2293, June 1992), the former spouse promised, as a condition precedent to payment, to voluntarily reimburse the Coast Guard for any future overpayments that she received from the retired pay account and to promptly notify the Coast Guard if under the supporting court order, a direct payment as child support is no longer effective because the children reached majority. ⁽³⁾

In her initial request for a DOHA review, the former spouse notes that her former husband owed her over \$10,000 in back child support and medical payments, ⁽⁴⁾ and over \$17,000 after all other expenses are considered. On appeal following the DOHA Settlement Certificate, the former spouse asked us to consider three things. She indicates that she initiated contact with the Coast Guard in January 2000, after USFSPA child support payments had stopped but before any notice of a debt had arrived, because she was concerned that the ex-spouse may have passed away without her or her daughters being aware of it. Second, she responded to the Coast Guard's April 1999 annual review of her eligibility to receive direct USFSPA payments, and therefore, the Coast Guard had to be aware of her younger child's eighteenth birthday. Third, the former spouse contends that she was not sure that the age of majority was 18 for the Coast Guard's purposes because the children's identification cards were still effective and the younger child was still in high school. ⁽⁵⁾

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of pay and allowances to or on behalf of service members if collection would be against equity and good conscience and not in the best interest of the United States and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the waiver applicant. In this case, the applicant is a former spouse of a service member who has received an erroneous payment from the service member's retired pay account. The standard we use to determine fault is whether a reasonable person knew or should have known that she was receiving payments in excess of her entitlements. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996); and DOHA Claims Case No. 97090810 (October 1, 1997). Our decisions and those of the Comptroller General indicate that waiver is not appropriate when an applicant is aware of information indicating an overpayment, even though the government may have made a mistake. In such instances, the applicant must have sought corrective action. The applicant does not acquire title to the excess payment merely because an administrative error occurred; she has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 97062629 (July 17, 1997) and the decisions cited therein.

The information in the record clearly suggests that the applicant should have questioned her right to receive direct payments for child support after August 1999. ⁽⁶⁾ In her application for the payments, the applicant promised to notify the Coast Guard when the right to the \$601 monthly payment ended because the child(ren) reached majority. Under the supporting order the \$601 monthly support was an indivisible amount payable on behalf of both children. Thus, when both had reached majority, there was no reasonable basis to expect additional direct payments. The applicant blames the Coast Guard for the administrative error because the annual certification process in April 1999 should have reminded the service that her younger daughter was about to reach 18. If the Coast Guard bears some responsibility for the overpayment, then so does the applicant. In April 1999 when the applicant certified to her younger daughter's minority, she was placed on notice that within a few months (August 1999), the younger child would reach 18 and any direct payments after that would be questionable.

The applicant states that her former husband is in arrears with respect to his support obligations and failed to reimburse her for medical and other expenses. However, we note that the applicant asked for only \$601 per month for child support in her USFSPA application, and the supporting order involved the same amount. There is no indication that the Coast Guard failed in any way to remit this amount each month through August 1999. The applicant should address her concerns about her former husband's failure to meet all of his support obligations, particularly those beyond the limits of the USFSPA application, to the appropriate court.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. *See* 10 U.S.C. § 1408.

2. The court order was entered in Rhode Island. The domestic relations law in that state generally provides that a person has attained full legal age at 18 years. *See* R.I. Gen. Laws § 15-12-1.
3. These requirements are in accordance with the implementing regulations. *See* 32 C.F.R. § 63.6(b)(1)(vii).
4. The court order also provided that each party shall divide equally all uninsured medical expenses of the children.
5. The court order did not define "minor children." Thus, we assume that it meant to say that each child was a minor so long as she was under 18. *See* Footnote 2 above.
6. Even if she assumed that she had some legal basis for an extension until the younger daughter completed her education, the record is devoid of any representations by an appropriate person or official indicating that her assumption was correct. We are unaware of anything else in the record upon which she could have predicated reasonable reliance.