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September 28, 2000

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In Re:

[Redacted]

Claimant

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Claims Case No. 00071806

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

Navy member erroneously continued to receive Basic Allowance for Quarters and Variable Housing Allowance when he and his dependents were assigned government quarters. The member should have expected his pay to decrease substantially when he moved into government quarters. Waiver may not be granted because the member should have questioned the accuracy of his pay when it did not decrease.

### **DECISION**

This is in response to an appeal of DOHA Settlement Certificate, DOHA Claim No. 99021608, March 16, 1999. We have been asked to render a decision regarding the member's request for waiver of a debt in the amount of \$10,541.26. The debt arose when the member was erroneously paid Basic Allowance for Quarters at the with-dependent rate (BAQ-D) and Variable Housing Allowance at the with-dependent rate (VHA-D) while assigned to government quarters during the period June 28, 1996, to June 30, 1997.

### **Background**

The member was receiving the allowances while living in off-base housing. However, on June 28, 1996, he moved from off-base housing into government quarters. From June 28, 1996, to June 30, 1997, he was erroneously paid both allowances, causing an overpayment of \$10,541.26. In his appeal of the denial of his waiver request, the member states that he was not aware he was being overpaid because he was at sea for most of 1996 and 1997, leaving his wife in charge of the finances. He also indicates that his wife was not aware that he was being overpaid because she did not receive any leave and earnings statements during the period he was at sea. In addition, he states that he did question the accuracy of his pay and contacted his pay officer when he discovered the error in June 1997. Finally, he states that

waiver should be granted because collection of the debt has caused his family great financial stress.

### **Discussion**

Under 10 U.S.C. § 2774, we may waive a claim of the United States against a member or former member of the uniformed services for erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted if there exists any indication of fraud, fault, misrepresentation, or lack of good faith by the member or former member. The standard we employ in determining whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware he was receiving more than his entitlement. *See Petty Officer Ricky Johnson, USN, B-256417, July 22, 1994; and Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, Jan. 17, 1995.*

When the member moved into government quarters, his pay should have decreased because he was not entitled to BAQ nor VHA while living there. When his pay did not decrease, he should have questioned its accuracy. The fact that his wife was in charge of the finances while he was at sea does not relieve him from the responsibility to monitor his pay. *See DOHA Claims Case No. 98112018 (January 11, 1999).* As discussed above, the standard we employ to determine fault is whether a reasonable person would be aware that he was being overpaid. It is our view that a reasonable person would be aware that his pay had not decreased after moving into government quarters.

Although the member did finally question the accuracy of his pay, he did not do so until he had been overpaid for twelve months. He should have expected a substantial decrease in pay (approximately \$900 per month) when he and his family moved into government quarters. Since the member should have been aware that he was being paid in excess of his entitlement, we cannot conclude that he was without fault, and thus, he is bound to repay the allowances. *See Captain Douglas K. Basiger, USAF, B-256600, July 14, 1994.*

Finally, we note that hardship does not provide a basis for waiver. *See Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, supra.* However, DFAS may take hardship into account in determining the monthly amount it collects from the member. He may contact DFAS in that regard.

### **Conclusion**

We affirm the Settlement Certificate.

/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ \_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

/s/ \_\_\_\_\_

Catherine M. Engstrom

Member, Claims Appeals Board