

DATE: May 1, 2001

In Re:

[Redacted]

Claimant

Claims Case No. 00102419

CLAIMS APPEALS BOARD DECISION

DIGEST

The Congress repealed 5 U.S.C. § 5532 effective October 1, 1999. A member cannot justify a waiver of collection of erroneous overpayment of retired pay under 10 U.S.C. § 2774 due to administrative failure to make deductions required by 5 U.S.C. § 5532 prior to that date merely because the Congress relieved retired members of the burdens of 5 U.S.C. § 5532 effective on or after October 1, 1999.

DECISION

A retired officer of the United States Navy appeals the December 12, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97102706, that affirmed the decision of the Defense Finance and Accounting Service (DFAS) to reject the service member's application for a waiver of the indebtedness he incurred for erroneous overpayment of retired pay. [\(1\)](#)

Background

The record shows that on May 1, 1994, the member, a captain, retired under conditions which entitled him to retired pay. On December 9, 1996, the member accepted a civilian position with the United States Navy Exchange Service. As a retired officer, the member's retired pay was subject to the dual compensation and pay cap limitation deductions provided in title 5, United States Code, Section 5532 (5 U.S.C. § 5532). Due to administrative error, the member's retired pay was not deducted during the period December 9, 1996, through February 28, 1997, causing an erroneous overpayment of \$4,868.01. DOHA found that a waiver of this indebtedness would not have been proper because the member was aware that his retired pay was not being reduced to reflect the requirements of 5 U.S.C. § 5532.

The Congress repealed 5 U.S.C. § 5532 effective October 1, 1999. On this basis, the member now requests a "retroactive waiver to obtain the monies [he] paid in." We interpret this as the basis offered by the member to support the waiver of the \$4,868.01 erroneously overpaid between December 9, 1996, and February 28, 1997, as well as a claim for any amounts deducted from him between March 1, 1997, and September 30, 1999, due to 5 U.S.C. § 5532. The member offered no other legal support for his position.

Discussion

As stated in the Settlement Certificate, 10 U.S.C. § 2774 provides a mechanism to waive collection of claims against members who receive an erroneous overpayment of pay or allowances if collection of the debt would be against equity and good conscience and is not in the best interest of the United States. Moreover, the *National Defense Authorization Act for Fiscal Year 2000*, Pub. L. No. 106-65, Div. A, Title VI, § 651(a)(1), 113 Stat. 512, 664 (1999) provided that "Section 5532 of title 5, United States Code, is repealed," but Section 651(c) stated that the "amendments made by this section shall take effect on October 1, 1999." The plain meaning of the statutory language is that the deductions required by 5 U.S.C. § 5532 were the law through the end of September 30, 1999. The Congress specifically set an effective date for repeal of 5 U.S.C. § 5532 and the end of the deductions, namely, October 1, 1999. If the Congress had intended to relieve members from the burdens of 5 U.S.C. § 5532 prior to October 1, 1999, it clearly would have stated otherwise.

Thus, the repeal of 5 U.S.C. § 5532 in Public Law 106-65 provides no justification for a refund of all monies collected from the member prior to October 1, 1999, based on the application of 5 U.S.C. § 5532. Further, we cannot conclude that collection of the member's \$4,868.01 debt is against equity and good conscience and is not in the best interest of the United States.

Conclusion

We affirm the Settlement Certificate, and disallow the member's claim for a refund of any monies deducted from him on account of 5 U.S.C. § 5532, prior to October 1, 1999.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Matthew E. Malone

Matthew E. Malone

Member, Claims Appeals Board

1. The member's appeal was received by DOHA on October 24, 2000, almost three years after DOHA issued the Settlement Certificate. In the intervening three years, DOHA's 1997 closed records had been forwarded to the Records Center. The delay in responding to this appeal is attributable to our efforts to retrieve the member's file from the Records Center. When the file had not been returned to us as of April 2001, we decided to consider this appeal from a copy of the member's file as provided by DFAS.