

DATE: December 18, 2000

This decision was affirmed by the Deputy General Counsel (Fiscal) on May 1, 2002.

In Re:

[Redacted]

Claimant

Claims Case No. 00102418

CLAIMS APPEALS BOARD DECISION

DIGEST

The Department of Defense made several payments to the member around the time of his involuntary discharge due to failure to meet height/weight standards. The total payment was erroneous because the payments were made without a full consideration of all of the debts the member owed, including recoupment of a part of his Selective Re-enlistment Bonus (SRB). The member was initially cautious, but he believed that he was due all of the payments made to him at that time, in part, because he states that he was advised by an unidentified finance staff member that he was not required to reimburse the government for unearned SRB. In view of the nature of his discharge, the member should have followed through on his initial caution and obtained corroboration from a named official specifically describing to the member the benefits he should expect and the basis for them.

DECISION

A former Navy service member appeals the August 11, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00070315, in which DOHA waived collection of \$1,254.99, and denied waiver of \$4,922.67, of the \$6,177.66 erroneously overpaid to the member incident to his discharge from the Navy. The member requests that we waive the additional \$4,922.67.

Background

The record shows that the member was discharged on November 25, 1998, for failing to meet physical standards.⁽¹⁾ Prior to his discharge, he was advised that he would receive partial separation pay. The member had specifically

questioned his entitlements because the Defense Finance and Accounting Service (DFAS) had already erroneously overpaid him in October 1998. On November 15, 1998, the member received a mid-month net payment of \$1,182.86. On November 30, 1998, the member was issued two additional payments: \$1,182.33 and \$1,833.44, or a total of \$3,015.77. DFAS found that he was entitled to only \$1,760.78 of the \$3,015.77, leaving an indebtedness of \$1,254.99. Additionally, on December 1, 1998, the member was issued another payment of \$4,922.67, increasing his indebtedness to \$6,177.66. DFAS found, and our Settlement Certificate agreed, that the member may have reasonably perceived that the two November 30th payments represented his final settlement with the government, in part due to the absence of a final statement. But he should have questioned any payment extending into a month when he was no longer on active duty (December 1998).

The member notes that he had questioned his entitlement to separation pay before he received it, and he states that prior to discharge he was advised that because he served more than eight years in the Navy and completed more than half of his re-enlistment, he was not required to repay his Selective Re-enlistment Bonus (SRB). He notes the difficulty that would have been involved in meeting with his former unit's finance clerk once he was discharged, and notes that the error was not discovered until August 1999.

DFAS later prepared a *Statement of Military Pay Account* showing total entitlements of \$14,280.61 (including \$7,089.81 for separation pay and \$2,129.54 for accrued leave), and total deductions of \$9,176.97 (including \$596.27 for Federal tax withholding on the accrued leave payment and \$8,086.96 for SRB recoupment). Therefore, the member was owed \$5,103.64, but since he had received \$11,281.30 in payments from October through December 1998, he was overpaid \$6,177.66.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and certain allowances made to service members, if collection would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. *See* 10 U.S.C. § 2774(b)(1) and the *Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). To determine whether "fault" exists we look at whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement and whether he made inquiries or brought the matter to the attention of the appropriate officials.

There is no issue concerning the separation pay. The member was told that he would be paid separation pay; he expected payment; and he was paid. The difference between the member's expectations and DFAS' accounting appears to center on the reasonableness of the member's belief that SRB recoupment did not apply to him. In this regard, we find that the member's expectation was not reasonable.

The member was involuntarily separated because he failed to meet the weight control standard. While we did not have access to the member's re-enlistment documents, generally members who re-enlist with SRB benefits are advised and must acknowledge that they may have to refund a portion of their bonus payments if they do not serve the entire enlistment. *See Barry L. Wells*, B-228828, Mar. 23, 1988. In the *Wells* decision, the Comptroller General also noted that it is general knowledge that a member who voluntarily receives an early discharge is required to pay back the unearned portion of his bonus. Similarly, we believe that this general understanding extends to an involuntary discharge caused by

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the action of the member (e.g., failure to meet weight control standards). A member cannot reasonably assume that he is free of a recoupment obligation in such a situation without strong evidence of a reasonable basis to support such an assumption.⁽³⁾ The member was justified in initially questioning his entitlement, but he should have followed through on his caution and obtained a definitive explanation from a specific responsible official. An uncorroborated statement from the member that he obtained assurances that he was not subject to SRB recoupment, allegedly given to him by an unspecified person, cannot provide a basis upon which we can predicate equitable relief. *Compare* DOHA Claims Case No. 97042817 (July 1, 1997).

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. The member's *Certificate of Release or Discharge from Active Duty* (DD Form 214) states that the separation authority was "MILPERSMAN 3620260," and the separation code was "JFT." The separation authority indicates that the member failed the weight control physical standard, and we are advised by DFAS that the "JFT" code is involuntary discharge for failure to meet established physical readiness standards.
2. Volume 7A of the *Financial Management Regulation: Military Pay Policy and Procedures Active Duty and Reserve Pay*, DoD 7000.14-R, paragraph 090403, notes that members who are separated due to overweight are those who are separated "voluntarily or because of misconduct," thus permitting the service to generate an SRB recoupment.
3. For example, the member's condition was prompted by medical condition beyond his control and there is documentary evidence that he thoroughly explored this issue with a specific finance official and obtained unqualified assurances that no recoupment liability existed.