

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on February 22, 2002.

July 23, 2001

---

In Re:

[Redacted]

Claimant

---

Claims Case No. 01061503

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A former member received an erroneous payment after separation. He questioned the payment and received assurances that it was correct. Unless he could articulate a reason why he thought he was entitled to the payment, he should not have relied on the assurances that the payment was correct. He did not acquire title to the money and should have held it until his entitlement to it was determined or until he was asked to return it. Under those circumstances, waiver under 10 U.S.C. § 2774 is not proper.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claims Case No. 01032701, dated April 13, 2001, which denied in part a former member's waiver request. The former member's debt arose when he was overpaid upon separation.

### Background

The former member separated from the Marine Corps on August 1, 1999. He had received mid-month pay of \$2,418.00 on July 15. At the end of July, he was due \$ 2,349.81, but was erroneously paid \$2,444.00 on July 30, resulting in an overpayment of \$94.19. On August 6, 1999, he received a payment of \$2,097.47. In our Settlement Certificate, we waived the overpayment of \$94.19, but denied waiver of \$2,097.47. The member argues that the debt should be waived because he questioned his entitlement to the August 6 payment and was told that it was correct.

## Discussion

Under 10 U.S.C. § 2774, we have the authority to waive repayment of erroneous payments of military pay and allowances to members and former members of the uniformed services if repayment would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good will on the part of the member or former member. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard we employ to determine fault is whether a reasonable person would or should have known that he was receiving payments in excess of his entitlements. Our decisions indicate that waiver is not appropriate when a member or former member is aware that he is being overpaid or has no reasonable expectation of payment in the amount received. *See* DOHA Claims Case No. 00031401 (May 10, 2000), and DOHA Claims Case No. 99033117 (April 15, 1999).

In the case before us, the former member indicates that he was concerned that the payment of \$2,097.47 which he received on August 6 was incorrect. He states that he contacted a specific personnel officer at his last duty station to inquire about the payment and was advised that the payment was correct. While we accept the former member's statement that he questioned his entitlement to the payment and was told that it was correct, waiver is not appropriate. He had received a final separation pay on July 30, which included all pay and allowances due him for July as well as one day of August. He should not have expected to receive a large payment in August, and indeed he indicates that he questioned the payment. There is no indication in the record before us as to why, at the time of the former member's question, the Defense Finance and Accounting Service (DFAS) might have concluded that the payment was correct. In order for the member to be able to rely on DFAS's assurances, he would have to have been able to articulate a reason why he thought he was entitled to the payment. If he could not do so, he should have continued to press for a more thorough explanation or asked for an audit of his pay account. In the meantime, he did not acquire title to the payment. He should have held it until he received a final determination that the money was his or until he was asked to return it. *See* DOHA Claims Case No. 00031401, *supra*; and DOHA Claim Case No. 99033117, *supra*.

## Conclusion

We affirm the Settlement Certificate.

/s/

---

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

---

Christine M. Kopocis

Member, Claims Appeals Board

/s/

---

Jean E. Smallin

Member, Claims Appeals Board