

DATE: August 29, 2001

In Re:

[Redacted]

Claimant

Claims Case No. 01082019

CLAIMS APPEALS BOARD DECISION

DIGEST

An Army aviator received orders on October 5, 2000, that he was being removed from flight status, but due to administrative error, the member was paid aviation career incentive pay (ACIP) and aviation continuation bonus payments later in October and in November 2000. The member actively advised finance officials of the error they had made in making these payments to him, and the erroneous payments stopped after November 30, 2000. The government's administrative error, by itself, does not entitle the member to waiver.

DECISION

An Army service member appeals the April 30, 2001, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 01040303, waiving in part (\$195), and denying waiver in part (\$13,300), the member's application for a waiver of an erroneous overpayment of pay and allowances. The member requests that the government waive the entire amount of overpayment, \$13,495.

Background

The record indicates that on September 21, 2000, orders were issued terminating the service member's flight pay status. The administrative report of the Defense Finance and Accounting Service (DFAS) indicates that the member received a copy of the orders on October 5, 2000. As a result, he was no longer entitled to receive aviation career incentive pay (ACIP) and aviation continuation bonus payments. However, due to administrative error, the member erroneously received ACIP from September 22, 2000, through November 30, 2000. In addition, he erroneously received an aviation continuation bonus payment in November 2000. These errors caused the member to be overpaid in the total amount of \$13,495.

In our Settlement Certificate, we agreed with the DFAS recommendation that we waive \$195, the portion of the overpayment paid in September 2000 because the member would not have been aware of a problem during that period

of time. That portion of the debt is not in issue. Also, in the Settlement Certificate, we found that the member should have known on October 5, 2000, that he was not entitled to the ACIP payments that he received later that month and in November 2000, or to the aviation continuation bonus payment that he received in November 2000.

On appeal, the member raises additional arguments. He states that the finance center office cited in the orders terminating his flight status does not exist; therefore the orders were not received by the appropriate agency.⁽¹⁾ The member also argues that he acted in good faith and there was no indication of fraud, fault, or misrepresentation on his part. Finally, the member states that waiving the remaining debt is in the best interest of the United States because it will make continued service a more favorable option to him and save the costs of training another aviator (a cost far in excess of \$13,300), while not waiving the debt will most likely result in his separation from the Army.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive erroneous payments of military pay and allowances 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, fault, misrepresentation, or lack of good faith on the part of the member. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). Waiver is not appropriate if a reasonable person would or should have known that he was receiving payments in excess of his entitlements. A member receiving erroneous payments in such a situation has a duty to question the payments and to retain the excess amounts for eventual repayment to the government. *See* DOHA Claims Case No. 01072001 (August 21, 2001) and DOHA Claims Case No. 99121406 (January 19, 2000). The fact that a debt occurred through administrative error does not entitle the member to waiver. *See* DOHA Claims Case No. 01070906 (August 7, 2001); DOHA Claims Case No. 00091208 (October 25, 2000); and *Staff Sergeant James S. Gannon, USA, Retired*, B-200919, Mar. 27, 1981.

For purposes of this appeal, we do not question that the government shares some responsibility for the erroneous payment and that the member became actively involved in correcting the error. We do not know whether the Total Army Personnel Command's distribution of orders to USAFAC instead of DFAS Indianapolis Center aggravated the government's error,⁽²⁾ but we agree that the command should have known better especially considering the amount of time that had passed. Nevertheless, as explained above, administrative error is an insufficient basis to grant a waiver. As the Settlement Certificate explained, the member knew on and after October 5, 2000, that he was not entitled to ACIP and the aviation continuation bonus. The member had a duty to return the overpayment to the government. Under these circumstances, waiver is not appropriate.

When a member applies to us to waive the collection of his debt, he is requesting relief from a legal debt as a matter of equity because he believes he did nothing wrong. Accordingly, a member does not support his waiver application when he states that he may separate from the service and force the service to expend its resources to train a replacement if the requested relief is not granted.

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. We note that the U.S. Total Army Personnel Command distributed a copy of Order 265-9 of September 21, 2000, to the Commander, USAFAC DEPT 60, Indianapolis, IN 46249. "USAFAC" refers to the U.S. Army Finance and Accounting Center, the predecessor to the DFAS Indianapolis Center. USAFAC has not existed as USAFAC since the early 1990s.
2. We tend to doubt it because the agency zip code remained the same.