

DATE: June 6, 2002

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In Re:

Redacted

Claimant

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Claims Case No. 02040431

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

A member's child support garnishments continued to be paid for four months after the member had been discharged. During that time, the support order was revised and made to apply retroactively. Because the member received a benefit from the funds erroneously paid on his behalf, he should be held responsible for repayment. The government's administrative error, by itself, does not entitle the member to waiver.

### **DECISION**

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No.02020404, dated February 27, 2002, in which we denied in part the waiver request of a former member of the United States Navy. The debt arose out of payments of garnished pay erroneously paid after the member had separated.

### **Background**

The record indicates that on October 17, 1998, the member was discharged from the United States Navy. At the time of discharge, the member was indebted to the United States in the amount of \$117.39. Therefore, he was not entitled to receive any further payments. However, on October 28, 1998, he received an overpayment of \$951.78, creating a debt of \$1,069.17. Further, through an administrative error, a child support garnishment continued to be paid on his behalf from November 1998 through February 1999, at the rate of \$1,098.00 per month. Thus, the member was indebted to the

Government for a total of \$5,461.17.

In Settlement Certificate No.02020404, we waived the \$117.39 that the member owed at the time of discharge. We denied waiver of the \$951.79 overpayment he received on October 28, 1998. Further, we denied waiver of the \$4,392.00 child support garnishment. The member now appeals our determination to deny the child support garnishment, arguing that this debt should be waived because the court order, ordering the garnishment, was invalid at the time the payments were made. <sup>(1)</sup> Specifically, the member contends that pursuant to the new order dated February 1999, the garnishment was unauthorized.

The file contains documentation from the Delaware County Domestic Relations Court in Pennsylvania, that indicates in February 1999, the support order was modified in order to reduce the amount of the member's payments and was made retroactive to November 1998. As a result, a credit to the member's account was posted for the monthly garnishment payments submitted by the Defense Finance and Accounting Service (DFAS) on behalf of the member, causing the amount of the member's arrearage to be reduced. Further, the Court noted that the member did not personally remit any payments from October 1998 through arch 8, 1999.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive erroneous payments of military pay and allowances if collection 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). The fact that a debt occurred through administrative error does not entitle the member to waiver. *See B-194027*, May 17, 1979. Waiver is not appropriate if a reasonable person would or should have known that he was receiving payments in excess of his entitlements. *See Id.*

In the instant case, the member received the benefit of the monies paid by DFAS to support his children on his behalf. The member clearly had an obligation to provide support for his progeny. That obligation includes the duty to be aware of the state of his child support payments. Although the member implies that he was paying the child support himself during the period in question, he has not provided any documentation to support this statement. In fact, the Court's records do not indicate that any payments were made by the member himself during that time. The Court has shown how the monies paid on behalf of the member have been credited to diminish the amount of his arrearage. While the member asserts that the payments were not pursuant to a valid Court order, we note that the order was changed retroactively, and therefore, the order appeared valid on its face when the payments were made. *See 61 Comp. Gen. 229* (1982). Because the member had the duty to support his children and the garnishment was meant to meet that obligation, it is not against equity and good conscience for the member to repay the debt due to these payments. If the member has any further questions about the Court's decision to credit his account and/or proper disbursement of those funds, he should contact the Delaware County Domestic Relations Court in Pennsylvania.

### **Conclusion**

We affirm the Settlement Certificate.

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

Michael D. Hipple

Chairman, Claims Appeals Board

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

Jean E. Smallin

Member, Claims Appeals Board

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

Jennifer I. Campbell

Member, Claims Appeals Board

1. The member's appeal request only addresses the child support garnishment overpayment. It makes no mention of the denial of the waiver for the October 28, 1998, overpayment. Therefore, we shall only consider the child support garnishment on appeal.