

KEYWORD: General; waiver of indebtedness; BAH-D

DIGEST: Upon his divorce, a Coast Guard member was awarded legal custody of his son. His former spouse then obtained physical custody of the child and did not return him. The member erroneously received Basic Allowance for Housing at the with-dependent rate (BAH-D) during the child's absence. Waiver of repayment of the dependent portion of the BAH-D is not appropriate because the money was not spent to support the member's son.

CASENO: 02072315

DATE: 9/17/2002

September 17, 2002

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In Re:

[Redacted]

Claimant

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Claims Case No. 02072315

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Upon his divorce, a Coast Guard member was awarded legal custody of his son. His former spouse then obtained physical custody of the child and did not return him. The member erroneously received Basic Allowance for Housing at the with-dependent rate (BAH-D) during the child's absence. Waiver of repayment of the dependent portion of the BAH-D is not appropriate because the money was not spent to support the member's son.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Case No. 01072002, dated August 16, 2001, which denied the waiver request of a Coast Guard member. The member's debt arose when he was erroneously paid Basic Allowance for Housing at the with-dependent rate (BAH-D).

### Background

In July 1994 the member was divorced and was awarded sole legal custody of his dependent son. The record indicates that his former spouse took the child in violation of the court order and did not return him. Law enforcement officials, with the assistance of the member, were unable to locate the child. When the member advised Coast Guard finance personnel that the child was no longer living with him, he was erroneously advised that he remained entitled to BAH-D because he had legal custody. During the period from August 5, 1994, through April 14, 1999, the member erroneously received BAH-D, causing a net overpayment of \$18,624.40. [\(1\)](#)

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of 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. If a member erroneously receives an allowance intended for the support of a dependent, waiver may be appropriate if the allowance is spent to support the dependent. If the allowance is not spent to support the dependent, collection of the resulting debt is not against equity and good conscience. *See* B-271983, Dec. 3, 1996; and B-248006, July 31, 1992.

In the case before us, the dependent portion of the BAH-D the member received was intended for the support of his son. The record indicates that the member did not contribute to the support of his son during the period at issue. According to the record, the member lived on his own sailboat and therefore did not incur any additional expense in maintaining a home for his son. Therefore, we do not believe that collection would be against equity or good conscience.

The member states that repayment of the debt would be a hardship to him. While hardship does not provide a basis for waiver, the Coast Guard, at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account. *See* B-252125, July 20, 1993.

### **Conclusion**

We affirm the Settlement Certificate.

/s/

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Michael D. Hipple

Chairman, Claims Appeals Board

/s/

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Christine M. Kopocis

Member, Claims Appeals Board

/s/

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Jean E. Smallin

Member, Claims Appeals Board

1. The member received \$58,557.27 in BAH-D, but was only entitled to \$39,932.87 for BAH without dependents. The difference therefore amounted to \$18,624.40.