

December 6, 2002

In Re:

[Redacted]

Claimant

Claims Case No.

CLAIMS APPEALS BOARD DECISION

DIGEST

A service member was paid Basic Allowance for Housing for eight months while he occupied government quarters. He received Leave and Earnings Statements which indicated the error, but did not review those statements to verify their accuracy and call the error to the attention of the proper authorities. Therefore, the member is partially at fault for the accrual of the debt, and waiver is precluded.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 02082006, dated October 24, 2002, which denied the request of a member of the Air Force Reserve for waiver of a debt which arose when he received Basic Allowance for Housing (BAH) while living in government quarters.

Background

The record shows that the member, a technical sergeant (E-6) in the United States Air Force Reserve, was called to active duty on October 19, 2001. The member was married to another service member and had resided with her in assigned government quarters for over six years prior to being called to active duty. He continued to reside with his spouse in their assigned government quarters until June 29, 2002. Because he was residing in assigned government quarters, he was not entitled to receive Basic Allowance for Housing (BAH) after being called to active duty. However, due to an administrative error, he was erroneously paid \$6,689.21 in BAH for the period October 19, 2001, through June 28, 2002.

On June 29, 2002, the member moved out of government quarters, and as such became entitled to receive BAH at the single rate. However, he was erroneously paid BAH at the higher with-dependent rate for the period June 29, 2002, through July 31, 2002. This resulted in an overpayment to him of \$901.43.

In Settlement Certificate, DOHA Claim No. 02082006, dated October 24, 2002, the adjudicator waived the \$901.43 overpayment, concluding that the claimant may not reasonably have been aware that his BAH was miscomputed during the period June 29, 2002, through July 31, 2002, that he acted in good faith in accepting that overpayment, and that all conditions necessary for waiver had been met. However, the adjudicator denied waiver with respect to the \$6,689.21 payment of BAH which the claimant was not entitled to receive. That denial was based upon the fact that the claimant had received a mobilization briefing concerning his pay entitlements, and had received Leave and Earnings Statements (LESS) during the period which clearly showed the improper payments. On appeal, the member seeks waiver of that additional amount.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection repayment of erroneous payments of pay and allowance of members or former members of the Uniformed Services if collection would be against equity and good conscience and not in the best interest of the United States, provided that there is no indication of fraud, fault, misrepresentation, or lack of good faith 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 whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was being overpaid. *See B-256417*, July 22, 1994. Moreover, since a member has a responsibility to verify the accuracy of his LESs, he is considered to be at fault with regard to an overpayment if information which would have alerted the member to the overpayment is provided and he does not call the error to the attention of the appropriate authorities. *See DOHA Claims Case No. 98120401* (March 4, 1999).⁽¹⁾ The fact that administrative error caused erroneous payments does not by itself entitle the recipient to waiver of the resulting debt if the standards for waiver are not met. *See DOHA Claims Case No. 98112018* (January 11, 1999), *aff'd*, Deputy General Counsel (Fiscal), April 4, 2001.⁽²⁾

In the case before us, the debt arose due to administrative error, but that alone does not entitle the former member to waiver. *See DOHA Claims Case No. 98112018, supra*. The former member occupied government quarters, so he was not entitled to receive BAH. A reasonably prudent person of the member's rank and experience should have expected the amount of his pay to reflect that fact. The LESs in the record clearly indicate that he was receiving BAH. He should have noted the error and brought it to the attention of the proper authorities. Since he did not do so, he is at least partly at fault for the fact that the erroneous payments continued for over eight months. In such a situation waiver is not appropriate. *See DOHA Claims Case No. 98120401, supra*.

Although a reasonably prudent person of the member's rank and experience should have known the circumstances under which he was entitled to receive BAH, it was not unreasonable for the adjudicator to conclude that, as an activated reservist, the member might lack knowledge as to the specific amount he was entitled to receive during the portion of his service in which he was eligible for such payments. Accordingly, the adjudicator's determination to waive the \$901.43 overpayment which resulted from the miscalculation of his BAH for the brief period June 29, 2002, through July 31, 2002, was proper.

Finally, we note that financial hardship does not provide a basis for waiver. *See DOHA Claims Case No. 97042817* (July 1, 1997). However, the Defense Finance and Accounting Service, at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account.

Conclusion

We affirm the Settlement Certificate.

/s/
Michael D. Hipple
Chairman, Claims Appeals Board

/s/
William S. Fields
Member, Claims Appeals Board

_____/s/_____
Jean E. Smallin
Member, Claims Appeals Board

1. While this case is a civilian case pertaining to waiver under 5 U.S.C. § 5584, the waiver standards are the same under 10 U.S.C. § 2774.
2. See footnote 1.