

January 8, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 02101701

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

A former member received active duty mid-month pay the month after he was separated. Waiver of the overpayment is not appropriate because he knew or should have known that he was receiving pay in excess of his entitlement, and therefore had the responsibility to bring the payment to the attention of the appropriate officials, and to persist in questioning them until he received a thorough explanation of the payment.

### **DECISION**

This is in response to an appeal of Claim Settlement, DOHA Claim No. 02080206, September 5, 2002, which allowed in part, and denied in part, waiver of the former member's debt.

### **Background**

A United States Army member separated on March 19, 2002. Records show that he was entitled to \$867.85 for the period March 16, through March 19, 2002. On March 31, 2002, he was paid \$1,732.61, resulting in a debt of \$864.76. This amount was waived in our Settlement Certificate and is not in dispute.

In dispute is the \$1,329.96 debt resulting from the former member receiving mid-month active duty pay on April 15, 2002, after separation from the Army. The member argues in his appeal that his finance personnel are responsible for disbursing the erroneous payments. The member states that in out-processing he was told to expect the service to be behind a couple of weeks with his pay. He states that he went to his finance office to question the payment he received on March 31, 2002, because he thought it was a lot larger than he expected. He states that the finance clerk told him that the payment was accurate and that he might receive another payment, one that would include partial payments for clothing, housing and food. After he received mid-month pay in April 2002, he inquired about its accuracy. The finance clerk assured him that everything seemed fine. This Office found that since the member received no written documentation of his entitlement, he should have pursued the matter further, and until he received such documentation, he should have held the money for eventual repayment. However, in his appeal, the member does not think he should be

held at fault in the matter when he was assured that the payment was accurate. He states that he had no reason to continue questioning the matter.

### Discussion

Section 2774 of title 10 of the United States Code provides authority for waiving claims for erroneous payment of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arises from an administrative error with no indication of fraud, fault, misrepresentation or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. The standard employed to determine whether a person was "at fault" in accepting an overpayment is whether, under the particular circumstances, a reasonable person should have known or suspected that he was receiving more than his entitlement. A service member who knows that he is receiving payments in error has the duty to retain such amounts for refund. *See* DOHA Claims Case No. 97052730 (July 10, 1997). A service member is not entitled to waiver as a matter of right whenever he receives an overpayment as a result of an administrative error. *See* DOHA Claims Case No. 97012103 (June 26, 1997).

In the present case, the former member admittedly suspected an error. Although the member states that he was led to believe that the April mid-month payment was his final payment by information he received during out-processing and reassurances he was given by finance personnel (specifically, that his final pay might be up to two weeks late) there is nothing in the record to support his claim or the reasons he says his finance personnel gave him for why he was entitled receive pay after discharge. <sup>(1)</sup> In our waiver decisions, we have closely examined such payments and we have held that any person who receives such a payment must be able to articulate a reasonable basis for expecting such a payment in the amount involved. *See* DOHA Claims Case Nos. 99033117 (April 15, 1999); 99012022 (March 11, 1999), *aff'd*, Deputy General Counsel (Fiscal), December 28, 2000; 97102801 (November 6, 1997); 97012103, *supra*; and 97011409 (June 6, 1997).

In his appeal, the member states that he believed the April mid-month payment of \$1,329.96 represented partial payments for clothing, housing and food. <sup>(2)</sup> However, we do not believe that this is reasonable, considering the timing and the amount of the overpayment. The payment was received almost a month after the member's discharge; it came on a mid-month payday like other active duty pay the member had received; and it came after the member had already received a very large payment (after discharge) on March 31, 2002. <sup>(3)</sup> Further, a review of the member's leave and earnings statements shows that the April mid-month payment was identical to the pay the member received during the mid-months of February and March, months immediately preceding his discharge. Therefore, the timing and amount of the payment should have alerted the member to further question finance personnel. Even though the government may have made a mistake in issuing the erroneous payments, waiver is not appropriate when the member was aware of information indicating an overpayment. The member must have sought corrective action until the matter was resolved, and in the meantime, he did not acquire title to the questionable payment. Therefore, he should have held the payment until a final determination of his entitlement was made or until the government asked for repayment. *See* DOHA Claims Case No. 00082301 (October 4, 2000).

### Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple  
Chairman, Claims Appeals Board

/s/

Jean E. Smallin  
Member, Claims Appeals Board

/s/

Catherine M. Engstrom  
Member, Claims Appeals Board

1. The member states that both times he visited his finance office, he was given a computer print-out of his pay. However, the member was unable to provide the print-outs because he packed paperwork away during his move.
2. We note that at separation, the member was entitled to receive \$153.01 (19 days of rations at \$8.05333 per day), \$0.19 (19 days of BAQ at \$0.01 per day), \$564.74 (19 days of VHA at \$29.72333 per day), and \$403.20 (12 months of clothing allowance at \$33.60 per month). Cumulative, the member was entitled to receive approximately \$1,121.14 in these allowances. The member received these allowances in March. Even if the member was expecting a partial payment of these allowances, this was still over \$200 less than he actually received in April.
3. The member admits that he found that payment to be much more than he expected to receive, and therefore he questioned its accuracy.