
In Re:

[Redacted]

Claimant

Claims Case No. 02120405

CLAIMS APPEALS BOARD DECISION

DIGEST

A member received a payment before discharge, and then received a duplicate payment after discharge. When a member receives a payment to which he knows or should know that he is not entitled, he has a responsibility to bring the payment to the attention of the appropriate officials. If he does not do so, he is not without fault, and waiver cannot be granted.

DECISION

This is in response to an appeal of Claim Settlement, DOHA Claim No. 02032209, April 5, 2002, which denied a former Marine Corps member's request for waiver of a debt which arose when he received an erroneous payment after his discharge.

Background

The member was discharged on April 24, 2001. Prior to his discharge, on April 23, 2001, he received \$912.04. Due to an administrative error, he then received another payment of \$912.04 on April 26, 2001. Back pay due the member reduced the overpayment to \$762.05.

Discussion

Under 10 U.S.C. 2774, we have the authority to waive erroneous payments of pay and allowances to members or former members of the uniformed services if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fault on the part of the member or former member. For purposes of 2774, we interpret "fault" to include more than a proven overt act or omission. We consider fault to exist if in light of all the circumstances it is determined that a member or former member should have known that an error existed and taken steps to have it corrected. The standard we employ is whether a reasonable person should have been aware that he was receiving payments in excess of his entitlement. *See* Comptroller General decision, B-229296, August 17, 1988.

In his appeal, the member states that the overpayment was not his fault but was due to the administrative error of another Marine Corps member. While the duplicate payment occurred due to administrative error, the former member is not without fault because he should have been aware that he received more than his entitlement, especially due to the amount and timing of the erroneous check, and should have brought the matter to the attention of the proper authorities. When a service member had some basis to question his entitlement but did not question the appropriate officials, he is not entitled to waiver as a matter of right just because the overpayment resulted from an administrative error. *See* DOHA Claims Case No. 00010501 (January 21, 2000); and DOHA Claims Case No. 97081831 (September 16, 1997). In such circumstances, he does not acquire title to any excess amount, and waiver is inappropriate. *See* DOHA Claims Case No. 99071602 (September 10, 1999); and DOHA Claims Case No. 99033117 (April 15, 1999).

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