

April 21, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03040101

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A member received two payments of active-duty pay after retirement. Recognizing that the first payment was erroneous, he contacted the proper authorities and set the payment aside for eventual repayment. The member acted properly, and waiver is not appropriate because the member was aware that he was not entitled to the payment. When the second payment arrived, the Defense Finance and Accounting Service initially told the member that he was entitled to it. Unless the member could articulate a reason why he was entitled to the second amount, waiver is not appropriate.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 03021004, dated March 12, 2003, which denied in part the waiver request of a retired Air Force member. The debt arose when the member was overpaid at separation and then erroneously received two payments of active duty pay after retirement.

### Background

The member retired from active duty on November 30, 2001. At that time, he was overpaid in the amount of \$15.57. That amount was waived in Settlement Certificate 03021004 and is no longer at issue. After retirement, the member received two erroneous active-duty payments--\$1,678.15 on December 15, 2001, and \$739.14 five days later--for a total

remaining debt of \$2,417.29. The administrative report did not indicate that the member questioned the erroneous December payments, but with his appeal the member has submitted copies of e-mail messages he sent to finance personnel to question the payments. He states that he immediately realized that the December 15th payment was erroneous because it was made on a mid-month payday and was in the approximate amount of his mid-month active-duty pay. He states that he set the December 15th payment aside for eventual repayment and does not seek waiver of that amount. He argues, however, that the December 20th payment of \$739.14 should be waived, because it arose from administrative error and because the Defense Finance and Accounting Service (DFAS) continued to tell him that the latter payment was correct.

### Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of military 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. Waiver is not appropriate if the member knew or should have known that the payments were erroneous. *See* DOHA Claims Case No. 00031401 (May 10, 2000). If a member questions an erroneous payment and receives initial assurances that it is correct, waiver is not appropriate unless he can articulate a reason to expect a payment in the same approximate amount as the erroneous payment. *See* DOHA Claims Case No. 01061503 (July 23, 2001), affirmed by Deputy General Counsel (Fiscal), February 22, 2002. The fact that a payment arose due to administrative error does not, by itself, entitle the member to waiver. *See* DOHA Claims Case No. 02061109 (July 31, 2002).

In the case before us, the member realized that the active-duty mid-month pay he received on December 15th was erroneous and promptly called the error to the attention of the appropriate officials. He properly set the money aside for repayment. Since he was aware that he was not entitled to the money, waiver is not appropriate. *See* DOHA Claims Case No. 00031401, *supra*. While the December 15th payment was obviously mid-month pay, the payment on December 20th was not easily identifiable by date or amount. However, the member had retired from active duty on November 30, 2001, and should not have expected any further active-duty compensation. He has not articulated a reason why the December 20th payment might have been correct. Without such a reason, he should not have relied on assurances from DFAS that the payment was proper without a thorough explanation of the payment or an audit of his pay account. In the absence of the thorough explanation or audit indicating that the payment was correct, he should have retained the payment (as he states that he did at least in the case of the December 15th payment) for eventual repayment to the government. In such a situation, waiver is not appropriate. *See* DOHA Claims Case No. 01061503, *supra*. Finally, as stated above, administrative error, by itself, does not provide a basis for waiver. *See* DOHA Claims Case No. 02061109, *supra*.

### Conclusion

We affirm the Settlement Certificate.

/s/

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Michael D. Hipple

Chairman, Claims Appeals Board

/s/

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William S. Fields  
ember, Claims Appeals Board

/s/

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Jean E. Smallin  
ember, Claims Appeals Board