

DATE: October 20, 2003

In Re:

[Redacted]

Claimant

Claims Case No. 03092910

CLAIMS APPEALS BOARD DECISION

DIGEST

Waiver is not an appropriate remedy to relieve a former service member of liability for erroneous payments of federal income tax withholding when the member is no longer in a pay status.

DECISION

A former Air Force service member appeals the August 20, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03062305 in which DOHA waived \$43.20, denied waiver of \$1,556.38, and did not consider waiver of \$915.90 of the member's request for waiver of total of \$2,515.48 erroneously paid to her in pay and allowances. The former member appeals only the \$915.90 not considered for waiver.

Background

The member separated from the Air Force in early September 2002. Although she did not continue to receive pay and allowances, federal taxes of \$305.30 per month were paid to the Internal Revenue Service (IRS) on her behalf for October through December 2002. The Defense Finance and Accounting Service (DFAS) reports that it did not closeout the member's account until 2003, and by then federal income tax withholding as of year end 2002 had been programmatically transferred to the IRS as a credit on the member's withholding account for that year.

The member contends that she was unaware of the fact that income taxes were being paid on her behalf for those months or on what income base they were assessed. She argues that she was a victim of this (and other) DFAS

accounting errors amounting to "incompetence and dereliction of duty that caused . . . undue stress and financial hardship" and that it would be against equity and good conscience to collect this debt from her because there is no indication of fraud, fault, misrepresentation or lack of good faith on her part.

Discussion

Section 2774 of title 10, United States Code (10 U.S.C. § 2774), provides authority for waiving claims for erroneous payments of pay or certain allowances made to or on behalf of members or former members of the uniformed services. The member stopped receiving pay and allowances in September 2002, and the three individual payments of \$305.30 (a total of \$915.90) each for withholding tax on the member's behalf were unrelated to the payment of any additional pay and allowances, even erroneous ones. Accordingly, these three payments are not within the scope of the waiver statute, and may not be considered for waiver. *Compare* the Comptroller General's decision in B-244596, July 22, 1991 (involving payment of survivor benefit premiums for the member after the member waived his retired pay). *Compare also* the Comptroller General's decision in B-246044 (February 11, 1992) where similar waiver relief was unavailable to a civilian official receiving erroneous payments of health premiums, in part, because he was in a non-pay status.⁽¹⁾ Additionally, as suggested by the DFAS administrative report, as a result of its errors, the member received additional credit, to which she was not entitled, against her total 2002 total tax liability. These amounts would have been totally refunded to her by the IRS if she had overpaid withholding for the year, or were available as a credit if she had a balance due to the IRS. *Compare* DOHA Claims Case No. 00073101 (August 21, 2000), *aff'd on reconsideration* by the Deputy General Counsel (Fiscal), Department of Defense, December 21, 2002. As stated in the Settlement Certificate, personal or family financial hardship is not a proper basis for granting a waiver. *See* DOHA Claims Case No. 97071007 (July 21, 1997).

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
ember, Claims Appeals Board

1. Erroneous overpayments of civilian pay and allowances are governed by 5 U.S.C. § 5584.