

July 31, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03061301

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

A reservist called to active duty received payments of per diem under erroneous orders. It was later determined that she was not entitled to per diem. The erroneous payments can be waived only to the extent the money was spent for its intended purpose. The burden is on the member to provide documentation as to the expenditure of the money.

### **DECISION**

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate No. 03041107, dated May 27, 2003, which denied in part the waiver request of a member of the United States Army Reserve. The debt arose when the member received erroneous payments of per diem.

### **Background**

The member was ordered to active duty as of October 16, 2001. Initially, her orders did not authorize payment of per diem. The member was wrongly advised as to her entitlements, and modified orders which authorized per diem were issued on February 22, 2002. However, the authorization of per diem later was determined to be erroneous. Under the erroneous orders, the member received \$27,825.80 in per diem between January 30, 2002, and June 28, 2002. Because the member provided lodging receipts totaling \$12,300.00, we waived that amount in Settlement Certificate No. 03041107, *supra*. We denied waiver of the remaining \$15,525.80, for which evidence was not provided. The member appeals the partial denial.

## 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. *See Standards for Waiver*, 4 C.F.R. § 91.5(b)(1996). When a member receives payments of per diem under erroneous orders, waiver is appropriate only to the extent that the per diem payments were spent for their intended purpose in reliance on those orders. <sup>(1)</sup> *See* DOHA Claims Case No. 03040701 (April 15, 2003). *See also* B-271190, July 17, 1996.

In the case before us, the member received orders which authorized per diem. She has provided receipts in the amount of \$12,300 for the lodging she procured during the time in question. Waiver of that amount is proper. Since she has provided no evidence that the balance of the per diem she received was spent for its intended purpose, waiver of the remaining \$15,525.80 is denied. *See* DOHA Claims Case No. 03040701, *supra*.

In closing, we note that financial hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 02062402 (July 18, 2002). However, the Defense Finance and Accounting Service, at its own discretion, may take hardship into account in determining the monthly amount it collects from the member.

## Conclusion

We affirm the Settlement Certificate.

/s/

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Christine M. Kopocis  
Acting Chairman, Claims Appeals Board

/s/

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William S. Fields  
Member, Claims Appeals Board

/s/

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Jean E. Smallin  
Member, Claims Appeals Board

1. For the purpose of per diem, see volume 1 of the Joint Federal Travel Regulations, Appendix A.