

October 28, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03100601

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

An officer received bonuses for medical pay, incentive pay, and additional special pay for which he agreed to remain on active duty for one year. He retired less than a year later and therefore became indebted for a portion of those payments. He erroneously received a final separation payment which should have been set off against his debt. Waiver in the amount of the final separation payment is proper, but the balance of the debt cannot be considered for waiver because the payments which gave rise to the debt were correct when made.

### **DECISION**

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 03090809, dated September 23, 2003, which waived a portion of the retired member's debt and determined that the remainder of the debt could not be considered for waiver. The debt arose when the member retired from active duty less than one year after receiving bonuses for medical pay, incentive pay, and additional special pay for which he had agreed to remain on active duty for one year.

### **Background**

The retired member received the bonuses for medical pay, incentive pay, and additional special pay on March 23, 2003. He submitted papers to retire effective August 1, 2003. [\(U\)](#) As of that date, he became indebted in the amount of \$37,216.66 for the unearned portion of the March 23 payments. Any amount due the retired member as a final separation payment should have been offset against the debt. Instead, the retired member erroneously received a final separation payment of \$9,039.87. Our adjudicator granted waiver in the amount of \$9,039.87 and determined that the

balance of the member's debt (\$28,176.79) could not be considered for waiver. The member appeals that determination.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive erroneous payments of pay and allowances to a military member if collection would be against equity and good conscience and not in the best interest of the United States. To be considered for waiver, a payment must be erroneous when made. *See* Comptroller General decision B-200113, Feb. 13, 1981. <sup>(2)</sup>

In the case before us, our adjudicator properly waived the portion of the retired member's debt (\$9,039.87) which was erroneously paid to him as final separation pay, since that amount should have been set off against his debt. *See* Comptroller General decision B-254196, Dec. 23, 1993. The balance of the debt cannot be considered for waiver because the payments which gave rise to the debt were correct when made. *See Id.*, and B-200113, *supra*.

Our jurisdiction in this matter includes only waiver under 10 U.S.C. § 2774. Our decision concerns only that statute.

### **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  
Member, Claims Appeals Board

/s/

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Jean E. Smallin  
Member, Claims Appeals Board

1. In his appeal, the member emphasizes that his retirement was not voluntary. Because the nature of his retirement is not relevant to a decision under 10 U.S.C. § 2774, we will not characterize his departure from active duty.
2. The case involves a doctor who received variable incentive pay, but failed to complete the service commitment. The case is cited for the principle that payments which are correct when made cannot be considered for waiver. The reason for failure to complete the service is irrelevant.