

DATE: February 25, 2004

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In Re:

[REDACTED]

Claimant

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Claims Case No. 04022401

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A former member erroneously received active-duty pay and allowances through direct deposit to his bank account several months after he separated. Waiver is not appropriate because the member should have been aware that he was receiving payments to which he was not entitled. The fact that his payments were direct-deposited into a bank account does not relieve the member of monitoring his statements and questioning any unexpected deposits.

### DECISION

A former member of the Army appeals the January 14, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 04011204, which denied waiver of the portion of the member's debt (\$3,394.94) related to erroneous payments made to the member after he separated. The portion of the member's debt related to an overpayment of pay and allowances prior to discharge was waived and is not in issue.

### Background

In relevant part, the record indicates that the member was discharged on February 11, 2003. The member then received the following direct deposits: on April 15, 2003, \$2,418.83; on April 30, 2003, \$487.80; and on May 15, 2003, \$488.31.

The member makes various arguments on appeal. He contends that he was in basic training throughout his time in the Army, and with the exception of the two-week period of leave around Christmas (2002), he had no access to his bank account. He received Leave and Earnings Statements during his enlistment, but he had no knowledge of his bank account balance. After he was discharged, he did not receive statements from the Army or his bank. He notes that his bank was located in South Carolina, but he lives in a different state, and he had no number to reach the bank in the event of a problem. When he left the Army and moved to the state where he now resides, he "assumed" that he was entitled to the money in his account, and he had no reason to believe otherwise. He contends that his situation involves an administrative error with no indication of fraud, fault, misrepresentation, or the lack of good faith. He is an honest person, with no reason to believe that he received payments to which he was not entitled. Finally, he requests us to grant

waiver based on his inability to repay the debt.

### **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 (1996). The member's honesty is not questioned here. The legal definition of "fault" does not imply any ethical lapse on the part of the member. It merely indicates that waiver is not appropriate if a member knew or should have known that he was receiving payments to which he was not entitled. The standard we employ to determine fault is whether a reasonable person would or should have known that he was receiving payments to which he was not entitled. If he knew or should have known about such overpayments, he has a duty to bring the overpayments to the attention of the proper authorities. If he does not do so, he is considered to be partially at fault and waiver is not available to him. *See* DOHA Claims Case No. 00112010 (March 12, 2001); and DOHA Claims Case No. 00032701 (May 30, 2000). In such a situation, the member does not acquire title to the payments and has a duty to hold them for eventual repayment to the government. *See* DOHA Claims Case No. 03040101 (April 21, 2003); and DOHA Claims Case No. 97090810 (October 1, 1997). The fact that the overpayments are direct-deposited in a bank account does not relieve the member of his responsibility for knowing that he received the payments. *See* DOHA Claims Case No. 03041511 (May 7, 2003); DOHA Claims Case No. 00112010, *supra*; and DOHA Claims Case No. 97011408 (June 10, 1997).

In the case before us, the member separated effective February 11, 2003. He has not articulated any reasonable basis to expect payment in April 2003 and May 2003 in the amounts indicated. The member's suggestion that he should not have been expected to monitor his bank account because he did not have contact information is unreasonable. A reasonable person would monitor such an account until it is closed. *See* DOHA Claims Case No. 03041511, *supra*; DOHA Claims Case No. 00112010, *supra*; and DOHA Claims Case No. 97011408, *supra*. He did not acquire title to the money and had a duty to hold it for eventual repayment to the government. *See* DOHA Claims Case No. 03040101, *supra*; and DOHA Claims Case No. 97090810, *supra*.

The member argues that he is not able to repay his debt due to severe financial hardship. Hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 03100612 (December 3, 2003). However, in cases of hardship, the Defense Finance and Accounting Service (DFAS) has the authority, at its own discretion, to reduce the size of the installments it collects from a debtor, *i.e.*, to extend the payment period. DFAS may also suspend or terminate collection when it deems it appropriate.

### **Conclusion**

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

ember, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
ember, Claims Appeals Board

1. DOHA Claims Case No. 97011408 involves a civilian employee. The waiver standards under 5 U.S.C. § 5584 are the same as under 10 U.S.C. § 2774.