

October 21, 2003

In Re:

[Redacted]

Claimant

Claims Case No. 03091201

CLAIMS APPEALS BOARD DECISION

DIGEST

An Air Force member's paydate was incorrectly established, giving her credit for twelve years of service when she entered active duty. While Leave and Earnings Statements were not being sent to her, she had access to her pay records after she changed her personal identification number (PIN) to allow such access. Waiver is denied for the period after she changed the PIN number because the incorrect entry for years of service was indicated on her pay records. She had a responsibility to verify the accuracy of the information and to bring the incorrect paydate to the attention of finance personnel.

DECISION

This is in response to an appeal of Settlement Certificate 03072102, dated August 11, 2003, which denied in part the request of an Air Force officer for waiver of a debt which arose when she was given credit for 12 years of service for pay purposes when she entered the service.

Background

When the member's active duty began in February 2002, she was erroneously given credit for 12 years of service, causing her monthly pay to be miscalculated from February 2002 through April 2003. The overpayments totaled \$20,145.42. The member's pay account was not established in the Defense Finance and Accounting Service (DFAS) computer system until June 2002. DFAS began to generate Leave and Earnings Statements (LES) as of that date, but the member states that she did not begin to receive LES until October 2002. DFAS records indicate, however, that the member changed her Personal Identification Number (PIN) on the My Pay website in July 2002 and therefore could

monitor her pay beginning in July 2002. Because the member did not have access to her LES until July 2002, our adjudicator waived overpayments in the amount of \$4,361.13 which she received from February 2002 through June 2002. The adjudicator denied waiver of the balance of the debt (\$15,784.29) because the member had access to her LES on-line as of July 2002 and had verbal notice from Finance personnel in early March 2003.

The member argues that the debt should be waived because it resulted from government error rather than any action on her part. She indicates that although she obtained a PIN number, she rarely accessed her LES because she did not understand the LES. She states that she was told that she might be entitled to credit for as much as four to six years of service because she was a lawyer.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of pay and allowances of members of the Uniformed Services if collection 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). Waiver is not appropriate if the member knew or, as a reasonable person, should have known of the overpayment. *See* DOHA Claims Case No. 98112018 (January 11, 1999) [\(1\)](#); and DOHA Claims Case No. 97032501 (June 9, 1997). When a member has records such as LES which indicate that she is being overpaid, she has a responsibility to review them and take corrective action. If she fails to review them and notify finance officials, she is at least partly at fault for the accrual of the debt, and collection cannot be waived. *See* Comptroller General decision B-259199, Feb. 22, 1995.

We agree with the member that her debt began due to administrative error. However, the decisions of the Comptroller General and this Office have consistently stressed the duty of military members to verify the information on their LES. *Id.* When a member receives information which should put her on notice of an error and fails to take corrective action, waiver of the resulting overpayment is precluded because she is considered to be at least partially at fault for the continued accrual of the debt. *Id.* While the member states that she rarely used the PIN to access her LES because she did not understand her LES, she had access to the information after she received the PIN and therefore was responsible for verifying it. If she did not understand her LES, she should have sought an explanation so that she could verify them. [\(2\)](#)

The member indicates that she was told that she might be entitled to credit for some years of service, and there is speculation in a series of e-mails written after the debt was discovered that she might have been entitled to some years of credit when she entered active duty. The member has not presented any evidence from which we could find that this was a reasonable inference, and in the absence of such, her comment is purely speculation. Moreover, even if she expected to receive some credit, she should have questioned twelve years of credit.

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple
Chairman, Claims Appeals Board

/s/

William S. Fields
Member, Claims Appeals Board

/s/

Jean E. Smallin
Member, Claims Appeals Board

1. This decision was affirmed by the Deputy General Counsel (Fiscal), Department of Defense, on April 4, 2001. While it involves a civilian employee, the standards for waiver for civilian employees under 5 U.S.C. § 5584 are the same as for military members under 10 U.S.C. § 2774.

2. In another context, the member calls our attention to Comptroller General decision

B-256417, July 22, 1994. The case is relevant in this context. In that decision, the member, a Private First Class, received Basic Allowance for Quarters while living in government quarters. He argued that he did not review his LES carefully because he did not understand them. In denying waiver, the Comptroller General stated that the member should have verified his LES and should have sought an explanation if he did not understand the information contained therein.