

June 23, 2004

\_\_\_\_\_)  
In Re: )  
 )  
 [Redacted] ) Claims Case No. 04061404  
 )  
 )  
 Claimant )  
\_\_\_\_\_)

**CLAIMS APPEALS BOARD DECISION**

**DIGEST**

When a member knows or should know that he has been overpaid, he has a duty to notify the proper authorities of the error and hold the overpayment for eventual repayment.

**DECISION**

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate No. 04040506, dated April 7, 2004, which granted in part the waiver request of a Navy member. The member's debt initially arose when he erroneously received payments of Basic Allowance for Housing at the single rate (BAH-S) while he occupied government quarters. The member's debt increased when he later received duplicate BAH-S payments.

**Background**

Before November 22, 2002, the member was living in bachelor enlisted quarters (BEQ) as a geographic bachelor and was entitled to BAH-S. On November 22, 2002, he was divorced. Because he was no longer a geographic bachelor, he was no longer entitled to BAH-S while he occupied BEQ. However, the member became a Resident Advisor (RA) to other BEQ residents and was erroneously advised that his RA status entitled him to continue to receive BAH-S. When the member learned that he was not entitled to BAH-S while he occupied BEQ, he moved

to non-government quarters effective May 19, 2003. At that time he regained his entitlement to BAH-S. As of May 18, 2003, the member had been overpaid in the amount of \$5,679.33.<sup>1</sup> In Settlement Certificate 04040506, this Office waived that amount, and it is no longer an issue.

The member received BAH-S in May, June, July, and August.<sup>2</sup> In September he received a retroactive, duplicate BAH-S payment of \$2,974.74 for the period of May 19, 2003 through August 31, 2003. In Settlement Certificate 04040506, this Office denied waiver of that amount, and the member appeals denial of waiver of that amount.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances to a member 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.<sup>3</sup> The standard we employ to determine fault is that of a reasonable person. If a reasonable person knows or should know that he is receiving money to which he is not entitled, he is at fault if he fails to bring the overpayment to the attention of the appropriate authorities. In such a situation, waiver is precluded. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). By itself, the fact that a payment arose due to administrative error does not entitle a member to waiver if he does not otherwise meet the standards for waiver. *See DOHA Claims Case No. 99061401* (June 30, 1999).<sup>4</sup>

We accept the member's statement that he was unaware that he was receiving BAH-S in error prior to May 19, 2003, and the payments of BAH-S he received prior to that date were waived. Following his move to non-government quarters, he was properly in receipt of BAH-S. When he received a retroactive, duplicate payment of BAH-S in the amount of \$2,974.74 in September 2003, however, he should have known that he was not entitled to it, or should at least have questioned it. He had a duty to bring the payment to the attention of the appropriate

---

<sup>1</sup>The Defense Finance and Accounting Service originally calculated the debt as \$8,654.07, but later adjusted it to \$5,679.33, because of the member's move to non-government quarters.

<sup>2</sup>The erroneous payment for May 1 through 18 was waived. The member's entitlement began on May 19.

<sup>3</sup>The legal definition of "fault" in waiver decisions does not imply any ethical lapse on the part of the employee or member. It merely indicates that he is not entirely without responsibility for any resulting overpayment and that, therefore, the equitable remedy of waiver is not available to him.

<sup>4</sup>The standards for waiver are the same under 5 U.S.C. § 5584, the civilian waiver statute.

authorities and hold the money until he was asked to repay it or until his entitlement to it was verified. In such a situation, waiver is precluded. *See* DOHA Claims Case No. 99061401, *supra*.

**Conclusion**

We affirm the Settlement Certificate.

/s/

---

Jean E. Smallin  
Acting Chairman, Claims Appeals Board

/s/

---

William S. Fields  
Member, Claims Appeals Board

/s/

---

Catherine M. Engstrom  
Member, Claims Appeals Board