

April 28, 2004

In Re:

[Redacted]

Claimant

Claims Case No. 04041901

CLAIMS APPEALS BOARD DECISION

DIGEST

A retired member received two erroneous active duty payments after retirement. He questioned the first payment and received assurances that it was correct. Unless he could articulate a reason why he thought he was entitled to a payment in that amount, he should not have relied on general assurances that the payment was correct. He did not acquire title to the overage and should have held it until his entitlement to it was determined or until he was asked to return it. Under those circumstances, waiver under 10 U.S.C. § 2774 is not proper.

DECISION

This is an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 02101605, dated November 18, 2002, which denied the request of a retired Air Force member. The member's debt arose when he erroneously received active-duty pay after retirement.

Background

The member retired from the Air Force on August 31, 2001. In his mid-month and end-of-month pay for August, he received the active duty pay and allowances he was due for the month of August. As final pay, therefore, he was due only a lump-sum leave payment for two days of leave (a gross amount of \$187.86). Instead, he received one payment of \$2,076.88 on September 7, 2001, and another payment of \$916.29 on February 1, 2002. The member states that he contacted finance personnel after he received the first payment and was told that it was correct. He states that finance personnel later told him that he was due the second payment. He points out that the payments were the result of administrative error.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of overpayments of pay and allowances of 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. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard we employ to determine fault is whether a reasonable person would or should have known that he received a payment in excess of his entitlements. Our decisions indicate that waiver is not appropriate when a member is aware that he is in receipt of an overpayment or has no reasonable expectation of payment in the amount received. *See* DOHA Claims Case No. 01061503 (July 23, 2001), *aff'd* Deputy General Counsel (Fiscal), February 22, 2002; and DOHA Claims Case No. 00031401 (May 10, 2000). When a member questions a payment, he should not accept general assurances that the payment is correct unless he can articulate a reason to expect a payment in the approximate amount he has received. Instead, he should request a specific explanation of the payment. *Id.* In the absence of a sufficient, detailed explanation, he does not acquire title to the overpayment and has a duty to hold it until his entitlement to it is determined or until he is asked to return it. *Id.* The fact that a payment arises due to administrative error, by itself, does not entitle a member to waiver. *See* DOHA Claims Case No. 01091310 (October 5, 2001).

First of all, we agree with the member that his debt arose due to administrative error, and that he did nothing to initiate the payments. That fact, by itself, does not entitle him to waiver. If administrative error, by itself, were a basis for error, most debts would be waived, since most debts arise from administrative error. Our decision does not imply any moral lapse on the part of the member. *See* DOHA Claims Decision No. 00112801 (December 28, 2000).

In this case, the member received \$2,076.88 on September 7, 2001, a week after he retired. Since he had received regular mid-month and end-of-month payments in August and had an unused leave balance of two days, he should not have expected to receive over \$2,000 at that time. Indeed, he states that he called finance personnel to question the payment and was advised that it was correct. A member is expected to be aware of his leave balance. *See* DOHA Claims Case No. 01091310, *supra*. While the member points out that he was unfamiliar with retirement procedures, a member with his years of service should have been generally aware of his entitlements at separation; with a leave balance of only two days, he should not have expected over \$2,000 in September. Unless he could articulate a reason to expect such a large payment, he should have held the overage for detailed confirmation that it was his or for eventual repayment. *See* DOHA Claims Case No. 01061503, *supra*; and DOHA Claims Case No. 00031401, *supra*.

The same reasoning applies to the second erroneous payment which the member received--\$916.29 received on February 1, 2002. While the member states that he was told that he would receive a payment, he should have further questioned his entitlement to the payment of active duty pay, unless he was able to articulate a reason to expect a payment in that amount so long after retirement. *Id.*

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