

DATE: November 18, 2004

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In Re:

[REDACTED]

Claimant

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Claims Case No. 04100401

## CLAIMS APPEALS BOARD DECISION

### DIGEST

For a payment to be considered for waiver, it must be erroneous at the time it was made. Payments that are valid when made may not be considered for waiver under 10 U.S.C. Sec. 2774.

### DECISION

A service member of the United States Navy appeals the July 12, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 04052702. In the Settlement, DOHA waived \$390 of the total indebtedness of \$1,355, and did not consider the balance of \$965 for waiver. The service member seeks waiver of the \$965.

### Background

The record indicates that the member performed temporary additional duty (TAD) during the period June 4, 2001, through June 8, 2001. In connection with his TAD, the member received travel advances in June 2001 totaling \$920. When the service member submitted his travel voucher, the Defense Finance and Accounting Service (DFAS) determined that he was entitled to \$1,532.03 in allowances; however, DFAS issued a payment in the amount of \$1,002.03 instead of \$612.03. Therefore, the member was erroneously overpaid \$390. Our Office waived collection of this overpayment, and it is not in issue here.

The record also shows that the member was issued a travel advance of \$965 on March 30, 2000. DFAS posted an indebtedness in this amount against the member because DFAS and the Navy were unable to locate the member's travel claim or any other documentation supporting the advance. DOHA sought documentation from DFAS to support the \$965 indebtedness, but no further substantiation of the indebtedness was forthcoming prior to the issuance of the Settlement Certificate. Our Settlement Certificate concluded that without proof of an indebtedness the member should

not be held liable for the \$965; however, DOHA was not authorized to consider the \$965 indebtedness under the waiver statute (title 10, United States Code, Section 2774) because the record was devoid of any indication that the member was erroneously overpaid.

In his appeal, the member suggested that travel officials aboard the vessel to which the member was assigned, lost or otherwise misplaced the member's travel claim and supporting documentation. The member offered documentary proof that he had attended training between April 3, 2000, and April 8, 2000, and the member also offered an itemization of expenses during that period. In response, DFAS informally responded that it appears that the member expended the funds for their intended purpose, therefore waiver of the \$965 should be approved.

### **Discussion**

Pursuant to 10 U.S.C. Sec. 2774, this Office has the authority to waive, in whole or in part, collection of overpayments, including "erroneous payments of travel and transportation allowances." Thus, the statute itself requires that a payment must be erroneous when made as a precondition for waiver consideration. *See* DOHA Claims Case No. 01103017 (December 12, 2001). Advance payments generally cannot be considered for waiver because they are not usually erroneous at the time of payment. Exceptions exist when the advance covers erroneously authorized allowances and the member spent the advance in detrimental reliance on the erroneous authorization. *See* B-234751, Dec. 19, 1989, citing 67 Comp. Gen. 496 (1988). The record here does not indicate that there was any erroneous authorization in this case.

While the member may be fully entitled to the \$965 in issue, the waiver statute is not intended as a convenient short cut for repairing possible government mistakes in processing travel claims under title 31, United States Code, Sec. 3702, and the Joint Federal Travel Regulations. The Board remands this matter to DFAS. The appropriate element of DFAS should issue an initial determination on the member's travel claim in accordance with DoD Instruction 1340.21, coordinating with travel officials aboard the member's vessel if necessary. If the member is not satisfied with the legal determination of DFAS on his claim, he has the right, like any other travel claimant, to appeal to our Office as provided in the Instruction.

### **Conclusion**

The Settlement Certificate is affirmed and this matter is remanded to DFAS.

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  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
ember, Claims Appeals Board