

KEYWORDS: basic allowance for quarters

DIGEST: The member divorced his civilian wife, did not notify the appropriate officials, and continued to collect basic allowance for quarters (BAQ) at the with-dependent rate. He then married a service member, failed to notify the appropriate officials of it, and submitted a fraudulent certification for BAQ naming his civilian ex-wife as his spouse for allowance purposes. He was subsequently convicted of BAQ and variable housing allowance (VHA) fraud. We find his prior fraudulent submission for the BAQ allowance vitiates any claim for payment of BAQ at the with-dependent rate based on his court-ordered support for one of his illegitimate children.

CASENO: 05091301

DATE: 10/31/2005

DATE: October 31, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05091301

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

The member divorced his civilian wife, did not notify the appropriate officials, and continued to collect basic allowance for quarters (BAQ) at the with-dependent rate. He then married a service member, failed to notify the appropriate officials of it, and submitted a fraudulent certification for BAQ naming his civilian ex-wife as his spouse for allowance purposes. He was subsequently convicted of BAQ and variable housing allowance (VHA) fraud. We find his prior fraudulent submission for the BAQ allowance vitiates any claim for payment of BAQ at the with-dependent rate based on his court-ordered support for one of his illegitimate children.

DECISION

This is in response to a request for reconsideration of Defense Office of Hearings and Appeals (DOHA) Appeal Decision, DOHA Claims Case No. 05052706, dated August 26, 2005, which disallowed the member's claim for basic allowance for quarters (BAQ) [\(1\)](#)

at the with-dependent rate.

Background

While the member was in the Army he fathered various illegitimate children by different mothers between March 1982 and February 1993 . On August 27, 1984, he married a civilian but they later divorced on March 30, 1990. The member failed to notify the Army of his divorce. On June 7, 1993, he married a service member. She was the mother of his daughter born before their marriage on February 2, 1993. His military spouse claimed the child as a dependent for BAQ purposes until October 1, 1995, at which time she changed her status to BAQ at the single rate.

On October 16, 1995, the Defense Accounting Office, Fort Sam Houston, authorized a pay adjustment against the member in the amount of \$10,761.58 for overpayment of BAQ and variable housing allowance (VHA). A portion of the debt was recouped from the member's pay. On March 13, 1997, the member was convicted of various criminal offenses, including BAQ and VHA fraud, and was incarcerated at the Disciplinary Barracks, Fort Leavenworth, Kansas. He was reduced in rank to private and separated on March 27, 1997. At that time, his pay and allowances ceased and his debt was established as \$10,390.37. The court martial action was approved on December 11, 1997. However, it was later determined that the member was covered by the court decision of *United States v. Gorski*, 47 M.J. 370 (1997), and that his pay and allowances had accrued until the approval of his court martial. Thus, he was paid for the period March 1997 through December 1997.

On June 8, 1999, the member submitted a USDB Form 96, Inmate Request Slip, that stated "I hereby request that I be paid the money owed to me ASAP." In its response, dated June 9, 1999, the Defense Military Pay Office (DMPO) advised the member that two audits of his pay were in progress.

After various audits of his pay by the Defense Finance and Accounting (DFAS), and two prior reconsiderations of the

debt by the DFAS Office of the General Counsel (OGC), OGC found that the member was not entitled to BAQ at the with-dependent rate for the period of June 7, 1993, through September 30, 1995. The member subsequently appealed this determination to our Office. In the Appeal Decision, the DOHA adjudicator found that the part of the member's claim for BAQ at the with-dependent rate for the period June 7, and 8, 1993, was barred by the six-year statute of limitations as set forth under 31 U.S.C. § 3702(b). With regard to the merits of the claim, the adjudicator disallowed the member's claim for BAQ at the with-dependent rate for the period June 9, 1993, through October 1, 1995, based on the fact that the member could not have claimed as a dependent his member spouse for BAQ purposes as set forth under subparagraph 30224a(2) of Department of Defense Pay & Allowances Entitlements Manual (DODPAEM), volume 7A of the Department of Defense Financial anagement Regulation (DODFMR); and the member could not have claimed his previous wife as a dependent for BAQ purposes as set forth under subparagraph 30224a(3) of the DODPAEM which excluded a

"dependent for whom the member has been absolved of the requirement to provide support."⁽²⁾

The member now requests reconsideration of the Appeal Decision based on the following: (1) he references a USDB Form 96 dated April 4, 1999, which he asserts shows he requested payment of his claim earlier than June 9, 1999, and therefore, June 8 and 9, 1993, should not be time-barred; (2) he states that even though he was married to another service member during the period in question, they were assigned to different duty stations and were prevented from living together;⁽³⁾ and (3) he states that he provided support for his other dependents during the period in question, namely for an illegitimate child for whom he paid court-ordered child support.⁽⁴⁾

Discussion

The statutory authority for our Office to settle pay and allowances claims of members is set forth under 31 U.S.C. § 3702. Paragraph (b)(2) contains the statute of limitations for submission of claims against the Government. A claim must be received by the agency within six years of its accrual. In the member's appeal to our Office, dated May 6, 2005, he asserted that he submitted his claim well inside the 6-year statute of limitation, he referenced a USDB Form 96, Inmate Request Slip dated June 8, 1999, and submitted a copy of the form. In the Appeal Decision, the DOHA adjudicator accepted the June 8, 1999, USDB Form 96, as the earliest written, signed, and received iteration in the record of what became the member's claim. The adjudicator found that the USDB Form 96 was received no later than June 9, 1999, and thus, barred consideration from the claim for June 7, 1993, and June 8, 1993. However, in his request for reconsideration, the member now asserts that he submitted his claim beginning April 4, 1999. We see no reason to reverse the decision made by the adjudicator, especially since the member in his appeal asserted that his first submission of the claim was June 8, 1999. In addition, the April 4, 1999, USDB Form 96 concerns the member's request for an audit of his pay, whereas his June 8, 1999, USDB Form 96, concerns a specific request to be paid the money owed him. Thus, the member's claim is limited to the period beginning with sixth antecedent anniversary of the date his June 8, 1999, USDB Form 96 was received. The DOHA adjudicator found this date to be June 9, 1999, and therefore, our reconsideration of the claim is limited to the period June 9, 1993, through September 30, 1995.

As to the merits of his claim, the member states that he and his wife, although married on June 7, 1993, lived at separate

duty stations from the date of their marriage until March 26, 1994. He cites 62 Comp. Gen. 666 (1983), in support of his claim for BAQ at the with-dependent rate. In that decision, the Comptroller General found that if two members are residing separate and apart due to their duty assignments, their quarters allowances entitlements should be determined on an individual basis. If both members are living separately, both must provide separate sets of quarters for children from previous relationships. Thus, each may be entitled to a quarters allowances at the with-dependents rate.

The facts here are distinguishable from those in the Comptroller General decision cited by the member. In the present case, the member was not receiving BAQ at the with-dependent rate on behalf of any child at the time of his marriage to his military spouse. He was, however, improperly receiving BAQ at the with-dependent rate for his civilian spouse because he failed to inform the finance office of his divorce. He also did not advise the appropriate officials of his subsequent marriage to another active duty service member. In fact, on August 7, 1995, he submitted a fraudulent BAQ certification statement, DFAS Form 704. He certified that he was married to a civilian and providing support for her. He stated that his wife was not a member and that she resided at the same address as he did. In fact, on the continuation page to DFAS Form 704, where the member was instructed to list the names of his dependents, their relationship, birth dates and current addresses, he listed as his wife the name of the civilian ex-wife he had divorced on March 30, 1990. He did not list his current wife, his military spouse, whom he married on June 7, 1993, nor did he list their child.

According to the record, DFAS (in various audits), DFAS OGC (in reconsidering the claim on three occasions) and our Office (in the Appeal Decision) have examined the member's quarters allowance on an individual basis for the period in question and all have concluded that he was not entitled to BAH at the with-dependent rate. Therefore, we see no reason to retroactively allow payment of this claim based on the Comptroller General decision cited by the member, especially since the member submitted a false DFAS Form 704 representing that he was still married to his civilian wife. In similar circumstances involving travel, the Comptroller General has held when a claimant submits a fraudulent travel voucher for dependents that did not travel, his fraudulent submission later vitiates any claim arising out of the transaction. *See* Comptroller General decisions B-247574, Mar. 18, 1992, B-220119.1, Nov. 14, 1988, and B-186020, June 28, 1976. Since the member's credibility is in issue here and DFAS and our Office have already concluded that the member is not entitled to BAH at the with-dependent rate, we find that the same rule should apply in this claim. It is not appropriate for the Board to consider the member's claim based on a re-examination of the record where DFAS and our adjudicators had previously examined the record and found no basis for entitlement and our granting the claim would depend on accepting the member's redefinition of the facts.

Conclusion

We affirm the Appeal Decision.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. BAQ is now referred to as basic allowance for housing (BAH), and is authorized by 37 U.S.C. § 403. Public Law (Pub.L.)105-85, division A, title VI, § 603(a), 11 Stat. 1775 (1997), amended 37 U.S.C. § 403 to change the name of the housing allowance to consolidate the former BAQ with variable housing allowance and overseas housing allowance.
2. The relevant regulations are now found at subparagraphs 260304a(2) and 260304a(3) of volume 7A of the DoDFMR.
3. He cites 62 Comp. Gen. 666 (1983) in support of his claim.
4. DFAS retroactively allowed payment of BAQ at the with-dependent rate on behalf of one of the member's illegitimate children during the period December 5, 1991, through June 6, 1993. The record is silent as to support for the member's other illegitimate children apart from an involuntary allotment on their behalf beginning July 1, 1995.