

DATE: June 19, 2006

---

In Re:

[REDACTED]

Claimant

---

)  
Claims Case No. 06061225

## CLAIMS APPEALS BOARD DECISION

### DIGEST

When facts are in dispute in a claim, because the administrative office is in a better position to consider and evaluate them, we accept the statement of facts furnished by the administrative office, in the absence of clear and convincing contrary evidence offered by the member or other claimant.

### DECISION

A former service member of the United States Navy appeals the April 13, 2006, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06040707. The Settlement Certificate considered the member's application for a waiver of her indebtedness in the amount of \$1,770.44 to the United States, approving \$354.81 of the member's request but denying waiver of \$1,415.63. The member seeks waiver of the additional \$1,415.63.

### Background

The record shows that the member was released from active duty (REFRAD) on November 25, 2002, and she was entitled to receive a final separation payment in the net amount of \$1,675.18. On November 30, 2002, she received a payment in the amount of \$1,701.48, or \$26.30 in excess of the proper payment. Additionally, the member erroneously received payments of \$1,415.63 on December 17, 2002, and \$328.51 on December 24, 2002. The overpayments of November 30<sup>th</sup> and December 24<sup>th</sup> were waived and are not in issue. The member contends that DOHA erred in not waiving the additional amount of \$1,415.63 because the Defense Financing and Accounting Service (DFAS) failed to close her active duty pay account at REFRAD and that she is "being punished for their mistakes." Additionally, she disputes the finding in the Settlement Certificate that she actually received the \$1,415.63 in dispute, and she encloses written correspondence from DFAS indicating that an unspecified portion of the \$1,770.44 "is for 2002 Federal Income Tax Withheld when your account was closed in 2004" and the remaining portion of the debt was due to the end of month payment of \$1,701.48 on November 30, 2002.

As the Settlement Certificate indicates, the member received a leave and earnings statement in December 2002 indicating that regular mid-month pay was about to be directly deposited into her account, and knowing that she was no longer entitled to it, she initiated action to stop it. The member still contends that the mid-month pay was stopped, and the record confirms that it was. The member's waiver application indicates that she reasonably expected another \$328.51, which she did receive. However, the record also indicates that DFAS deposited an erroneous separation payment of \$1,415.63 to the member's account on December 17, 2002. To verify that the member actually received the \$1,415.63, prior to issuing the Settlement Certificate, DOHA and DFAS traced the December 17, 2002, overpayment of \$1,415.63 to a deposit of that amount into a specified Navy Federal Credit Union account. The member was advised of the account number in the Settlement Certificate.

### Decision

When facts are in dispute, because the administrative office is in a better position to consider and evaluate them, we accept the statement of facts furnished by the administrative office, in the absence clear and convincing contrary evidence offered by the member or other claimant. *See* 57 Comp. Gen. 415, 419 (1978). In this case, at DOHA's request, DFAS researched the issue of whether there was evidence that the member actually received the \$1,415.63 and found that this amount was deposited to the member's credit union account. The actual account number was specified in the Settlement Certificate, and the member did not offer rebuttal evidence to demonstrate that she did not receive the money (*e.g.*, an account statement). Accordingly, we conclude that the finding in the Settlement Certificate that the member received \$1,415.63 is sustainable.

Section 2774 of title 10, United States Code (10 U.S.C. § 2774), provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. In this case, the member reasonably expected an additional payment of \$328.51, but there is nothing in the record to suggest that the member had any reasonable expectation of a payment of approximately \$1,415.63. Accordingly, collection of this portion of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States. *See, e.g.*, DOHA Claims Case NO. 98061501 (June 26, 1998) referenced in the Settlement Certificate.

### **Conclusion**

The Settlement Certificate is affirmed.

Signed: Michael D. Hipple

---

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

---

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

---

Catherine M. Engstrom

Member, Claims Appeals Board