

DATE: July 17, 2006

In Re:

REDACTED

Claimant

)
Claims Case No. 06070704

CLAIMS APPEAL BOARD DECISION

DIGEST

A member erroneously received active duty pay for periods in 2001 when he was in an absent without leave status. The Defense Finance and Accounting Service discovered the error in September 2001, and the member became aware of the debt shortly after his discharge that month. The member did not file his request for waiver until March 2006. Since the member did not file his request within three years after discovery of the error by appropriate officials, his claim may not be considered for waiver under the provisions of 10 U.S.C. § 2774(b)(2).

DECISION

A former member of the United States Army appeals the June 1, 2006, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06052334. In the Settlement Certificate, DOHA denied consideration of the member's request that the government waive \$4,348.32 of indebtedness, which he accrued from overpayments of pay and allowances while on active duty, because he did not submit his application in a timely manner.

Background

The record indicates that the member was overpaid as a result of administrative error, and that at the time of the member's September 21, 2001 discharge, total overpayments amounted to \$5,440.13. The error resulted when the Defense Finance and Accounting Service (DFAS) paid the member for periods in 2001 when the Army had placed him in an absent without leave (AWOL) status. At discharge, the member was entitled to receive \$1,091.81, and this amount was applied against total overpayments, leaving an indebtedness owed to the government in the amount of \$4,348.32. The member stated that he became aware of the indebtedness shortly after his discharge, but the record indicates that he did not submit a written request for waiver until arch 31, 2006.

In his appeal, the member claims that he cannot be held liable for knowing about the indebtedness in 2001 because "there was so much turmoil taking place in my life I couldn't tell you what was going on." The member explained that he had attempted suicide several times in that period. The member states that the basis of his waiver is financial hardship, and in any event he now disputes the Army's action in placing him in a AWOL status when he was on active duty, presumably to dispute the basis of the debt itself.

Discussion

Under 10 U.S.C. § 2774(b)(2), we may not waive collection of erroneous payments to a member of the uniformed service if application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. The member insists that he cannot be deemed to know about the indebtedness in 2001 because of his mental condition, incapacity or illness at that time. Even where mental condition may be a relevant consideration, a waiver applicant must demonstrate by clear and convincing evidence that he was in such poor health that it was unlikely that he knew or could have known, or that he was otherwise unable to attend to ordinary financial

affairs. *See, e.g.*, DOHA Claims Case No. 03102401 (October 28, 2003). Our review of the evidence that the member enclosed with his appeal does not demonstrate that he could not attend to his ordinary financial affairs during the three year period between 2001 and 2004.

However, for the issue of the time limitations under Section 2774(b)(2), the member's actual or imputed knowledge is irrelevant. As the Settlement Certificate specifically explained, the period of limitations runs from the date that the erroneous payment was discovered by the administrative office, that is from the date it was definitely determined by an appropriate official, in this case September 2001, that an erroneous payment had been made. *See* 54 Comp. Gen. 133 (1974). Since the member's written waiver application was not received until March 31, 2006, we have no authority to consider it. *See, e.g.*, DOHA Claims Case No. 00080116 (October 11, 2000).

While this is dispositive of the member's claim, the member should also be aware that financial hardship is not an appropriate basis for waiver. *See, e.g.*, DOHA Claims Case No. 04091406 (September 16, 2004). Moreover, since it was not corrected by proper military authority, this Office accepts as fact the member's AWOL status as reported to us in the administrative report. [\(1\)](#)

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

1. *E.g.*, the member may wish to consider the availability of relief under 10 U.S.C. § 1552, through the filing of a petition with the Army Board of Correction of Military Records.