

DATE: October 4, 2006

In Re:

[Redacted]

Claimant

)
Claims Case No. 06091506

CLAIMS APPEALS BOARD DECISION

DIGEST

Retired Navy member's request for waiver of a claim against him for excess leave he took while in the service is denied since he either knew or should have known at the time he was taking leave he had not earned.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 06062317, dated June 28, 2006, which waived in part (\$74.08) and denied waiver in part (\$2,333.24), a Navy member's application for waiver of an erroneous overpayment in the amount of \$2,407.32. On appeal the member requests that we waive the \$2,333.24.

Background

On January 31, 2006, the member retired from the Navy and was due a final separation payment in the net amount of \$1,462.52. However, due to an administrative error, the member was paid \$1,536.60. Therefore, he was overpaid \$74.08. In addition, the member used 18 ½ days of leave in excess of his entitlement causing an overpayment of \$2,333.24. Therefore, he was overpaid \$2,407.32 (\$74.08 + \$2,333.24).

In the Settlement Certificate, our Office waived \$74.08 and denied waiver of the \$2,333.24. In his appeal, the member states that he requested 41 days of leave but was mistakenly given 51 days of leave. He states that he was not aware he had taken excess leave and did not learn of the error until he retired.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of a claim for erroneous overpayments of pay or allowances against a 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 that there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. A member is considered to be at least partially at fault, and waiver is precluded when, in light of all of the circumstances, it is determined that he should have known that an error existed, and should have taken appropriate action. If a reasonable person should have been aware that he received an erroneous payment, waiver is not appropriate.

The record shows that the member had 34 days of accrued leave and he took 51 days of leave from December 12, 2005, through January 31, 2006. The member's leave and earnings statement for the month of November 2005 shows a leave balance of 29 days. The member subsequently earned 5 days of leave through his retirement on January 31, 2006. Although the member requested 41 days of terminal leave on November 5, 2005, he should have been aware that he would only have a total of 34 days of leave on his balance. The member states that his request for terminal leave in the amount of 41 days was reviewed, signed and approved by his command. He subsequently learned that he had

miscounted the number of days he requested for terminal leave. Although his command did not catch the error and it was not discovered until after he retired, we have consistently held that a member is expected to know his approximate leave balance. *See* DOHA Claims Case No. 01091310 (October 5, 2001), B-247943, June 4, 1992, and 66 Comp.Gen. 124 (1986). If a member does not remain within his leave balance, he is required to repay any amounts he receives in excess of his entitlement. *See* 66 Comp. Gen. 124, 26, *supra*, citing B-200297, July 24, 1981. Thus, waiver is not appropriate under the circumstances of this case.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board