

DATE: November 15, 2006

In Re:

[REDACTED]

Claimant

)

Claims Case No. 06111301

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

A member has a duty to verify the information on his Leave and Earnings Statements and bring any errors to the prompt attention of the proper authorities. When a member fails to do so and an error that could have been identified results in overpayment, waiver is not appropriate under applicable waiver statutes like 10 U.S.C. § 2774 or 32 U.S.C. § 716.

DECISION

The former member requests reconsideration of the October 20, 2006, decision by the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06101610, in which our Office waived \$326.66 but denied waiver of \$4,600 in the collection of the government's claim against him for the overpayment of pay and allowances. The member asks us to reconsider waiver relief for the additional \$4,600.

Background

The record shows that the member performed active duty in Iraq from April 16, 2003, through July 2, 2003, and during that time was entitled to receive hardship duty pay (HDP), family separation allowance (FSA), and hostile fire pay (HFP). On July 3, 2003, the member left Iraq for needed surgery. As a result of administrative error, the member erroneously continued to receive HDP and FSA from July 3, 2003, through March 31, 2004, and HFP from August 1, 2003, through March 31, 2004. Consequently, the member was overpaid \$4,926.66. Our Office concluded that the member acted in good faith in accepting the overpayment (\$326.66) resulting from his erroneous receipt of HDP and FSA from July 3, 2003, through July 30, 2003. DOHA's decision to waive \$326.66 is not in issue in this reconsideration.

In his reconsideration request, the member contends that he was not aware of what payments he was receiving (HDP, FSA, HFP) because he was not issued any leave and earnings statements (LES) after returning to the United States. The only way he was aware of his pay was through his bank records.

Discussion

A member has a duty to review his LES for accuracy and bring any errors to the attention of the appropriate finance officials. When the member fails to do so, collection of the resulting overpayments is not against equity and good conscience. *See* DOHA Claims Case No. 97032501 (June 9, 1997). In this case, the member initially indicated that he had received LES during the period at issue.⁽¹⁾ In its decision of October 20, 2006, DOHA denied waiver, in part because a review of his LES by the member would have revealed to him that he was erroneously receiving HDP, FSA, and HFP after his return to the United States. In his request for reconsideration, the member now claims that he did not receive LES. DOHA's decision was correct, and the member's inconsistent statements in this regard do not support the assertion that he had no knowledge of the overpayment at the time it occurred. *See* Comptroller General decision

B-188492, Feb.16, 1978, involving waiver under 5 U.S.C. § 5584, a similar statute providing for waiver of overpayments to civilian employees.

In this case, waiver is not appropriate even in the absence of LES, because the member acknowledges that he had access to his checking account records. As noted above, the member was entitled to HDP, FSA, and HFP while he was in Iraq. During the period at issue, those allowances averaged \$575 per month. When the member left Iraq, he was no longer entitled to those allowances. Therefore, he should have expected a significant drop in income after his return. In Iraq in June 2003, the member's mid-month and end-of-month take-home pay totaled \$2,399.05; in August 2003, after his return, the total was \$2,641.55. The member had a duty to monitor deposits to his checking account, and when his pay did not drop significantly, he had a duty to notify finance officials and ask for a detailed explanation of his pay. *See* Comptroller General decision B-218722, Dec. 17, 1985.

Conclusion

The member's request for relief is denied, and we affirm the October 20, 2006, decision to deny waiver of \$4,600. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board

1. In his waiver application (DD Form 2789), the member answered "Yes" to question 17a: "IF MILITARY OR CIVILIAN, DID YOU RECEIVE LEAVE AND EARNINGS STATEMENT(S)?"