

DATE: January 30, 2007

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In Re:

[REDACTED]

Claimant

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Claims Case No. 07012401

**CLAIMS APPEALS BOARD**  
**RECONSIDERATION DECISION**

**DIGEST**

A member received advance *per diem* payments in connection with his active duty tour. When the member submitted his travel voucher for settlement, it was determined that his legitimate expenses were less than what he received in advance *per diem* payments. He was thus in debt for the difference between his legitimate expenses and the total amount of advance payments. The difference between his legitimate expenses and advances cannot be considered for waiver because the advances were proper payments when made. Waiver of the further payment is not proper because the member should have known that he was not entitled to further reimbursement.

**DECISION**

A member requests reconsideration of the October 23, 2006, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06100502. In that decision, DOHA denied waiver of \$15,190.76 of the government's claim against the member and determined that \$796.64 could not be considered for waiver.

**Background**

The record shows that the member was ordered to active duty in support of Operation Enduring Freedom on March 9, 2003. Orders were subsequently issued extending his active duty tour until March 3, 2005. In connection with his active duty tour the member received advance *per diem* payments totaling \$39,240.96 issued incrementally during the period April 21, 2003, through January 27, 2005. When the member submitted his travel voucher for settlement, his legitimate expenses were determined to be \$38,444.32. Thus, he became indebted to the government in the amount of \$796.64. Due to an administrative error, the member was issued a final travel settlement in the amount of \$15,190.76. <sup>(1)</sup> As a result, the member was overpaid \$15,987.40 (\$796.64 + \$15,190.76).

In his request for reconsideration, the member states that only one party knew or should have known what his entitlements were, and that party was the Pope Air Force Base (AFB) finance office. He states that they perform this job every day. He, on the other hand, is a traditional reservist who never had been called to active duty except for his reserve requirements until his involuntary call to active duty. He was unaware of all the entitlements of a member on TDY for two years. The only information he was given was from a briefing where he was told to expect partial *per diem* the first year. He believed this to mean that he would get paid less the first year and get the rest of the *per diem* at the time of settlement. Therefore, he did not know he was overpaid.

**Decision**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of travel expenses to a member if collection would be against equity and good conscience and not in the best interest of the United States.

Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. Waiver is not appropriate if a member knows or should know that he is receiving payments to which he is not entitled.

To be considered for waiver a payment must be erroneous. A travel advance payment is considered as merely a loan to the member, to be used for authorized expenses in accordance with his travel orders. It is not meant to represent a final determination of the amount to which a member is entitled, and members who receive such advance travel funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. A travel advance is only considered to be erroneous and subject to waiver to the extent it was made to cover expenses erroneously authorized and the member spent the advance in reliance on the erroneous authorization. *See* DOHA Claims Case No. 04100401 (November 18, 2004) and DOHA Claims Case No. 04021301 (February 27, 2004). In this case, the determination that the \$796.64 debt for advance *per diem* could not be considered for waiver was correct because there was no showing that the travel orders were erroneous or that the payments were erroneous when made.

However, the final travel settlement in the amount of \$15,190.76 was erroneously issued to the member and therefore may be considered for waiver. The record shows that when the member submitted his travel voucher, he did not list all his advances, provide a total of his advances or attach any documentation reflecting his receipt of the advances totaling \$39,240.96.<sup>(2)</sup> After submitting his travel voucher, the member received a travel voucher summary. This summary listed advance *per diem* payments received by the member in the amount of \$23,253.56. Since the member had received advanced *per diem* payments in the amount of \$39,240.96, he should have questioned the settlement payment of \$15,190.76. Although the member states that he was notified of a possible indebtedness in June 2005 by the Pope AFB finance office and his travel account was subsequently audited and he was told everything was fine, the member still had received advance payments of *per diem* on a monthly basis for two years and should have noticed not all the advances were reflected on his travel voucher summary. In addition, he should not have expected any further compensation for his travel considering not all the advances were listed. When a member is aware or should be aware that he has received an overpayment, he does not acquire title to the overpayment and has a duty to hold the amount for eventual repayment. *See* DOHA Claims Case No. 01081402 (September 18, 2001).<sup>(3)</sup>

### Conclusion

The member's request for relief is denied, and we affirm the October 23, 2006, decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin

Acting Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom

## Member, Claims Appeals Board

1. It appears that the error resulted from the failure to merge the old travel system into the new travel system. Not all data, to include paid advances, from the old travel system, transferred properly to the new system. As a result, the paid travel advances that were part of the old travel system were not assimilated with the new travel system advances at settlement.
2. If the member had properly annotated his travel voucher with a full list of the advances he received, presumably the error would not have occurred.
3. This decision involved a waiver request from a civilian employee under 5 U.S.C. § 5584. The same waiver standards also apply to military members seeking waiver under 10 U.S.C. § 2774.