

DATE: March 1, 2007

In Re:

[REDACTED]

Claimant

)
Claims Case No. 07022701

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

A member continued to receive active duty pay after her discharge. Waiver of the resulting debt under 10 U.S.C. § 2774 is not appropriate since the member should have been aware she was receiving amounts to which she was not entitled.

DECISION

A former Air Force member requests reconsideration of the January 31, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07012909. In that decision our Office waived collection of \$226.85 of the government's claim against the member and denied waiver of \$6,084.09 which arose when she continued to receive active duty pay after her separation from the Air Force. The member requests that we reconsider the denial of the \$6,084.09.

Background

On October 14, 2004, the member was discharged from active duty. At that time she was due a final separation payment of \$993.34, but erroneously received \$1,220.19, resulting in an overpayment of \$226.85. In addition, due to administrative error, the member continued to receive active duty pay through April 15, 2005, causing an overpayment of \$6,084.09. Thus, the member was overpaid \$6,319.94.

The DOHA adjudicator concluded that the member may not have been aware that she was erroneously overpaid in the amount of \$226.85 at separation. However, the adjudicator found that the member was aware or should have been aware that she was erroneously overpaid after separation when she continued to receive active duty pay from November 1, 2004, through April 15, 2005, in the amount of \$6,084.09.

On reconsideration, the member states that she believed these payments were allotments from her husband, who was also in the military. She states that these payments were not continuous and the fact that there was a one month delay led her to believe that they were coming from the allotment her husband was setting up for her. She states that she received no information about the deposits, and her husband was in receipt of leave and earnings statements (LES).

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of a claim for erroneous payments 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. However, if a reasonable person is aware, or should be aware, that she is receiving an erroneous payment, waiver is not appropriate. If the member knew or should have known that she was

receiving payments to which she was not entitled, she is at fault if she fails to bring the erroneous payments to the attention of the appropriate officials. In such a situation, the member does not acquire title to the payments and has a duty to hold them for eventual repayment to the government.

In this case, the member separated on October 14, 2004. She should have been aware that she was not entitled to any further pay after she had received her final separation pay. The member states that her husband was receiving LES and was uncooperative in giving her information on the deposits. However, if her husband was unwilling to give her information, this should have given her further reason to inquire about the validity of the payments, especially since the payments were deposited into the same bank account she had before her military separation and the amounts and the timing of the payments were consistent with her prior active duty pay. In addition, the fact that a member receives direct deposits does not relieve her of the responsibility for knowing that she continued to receive payments from the Defense Finance and Accounting Service (DFAS) after discharge, since a reasonable person would be aware of the approximate balance in her bank account. *See* DOHA Claims Case No. 04022401 (February 25, 2004) and DOHA Claims Case No. 00112010 (March 12, 2001). The member did not acquire title to the erroneous payments and had a duty to return them when asked.

Conclusion

The member's request for relief is denied, and we affirm the January 31, 2007, decision to deny waiver in the amount of \$6,084.09. 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: 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