

KEYWORDS: waiver of indebtedness

DIGEST: 1. When BAH is paid erroneously, waiver is appropriate only to the extent that the overpayments were applied by the recipient for the purposes intended.

2. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay and allowances, or any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official.

CASENO: 07071705

DATE: 7/24/2007

DATE: July 24, 2007

_____)	
In Re:)	
[REDACTED])	Claims Case No.07071705
)	
Claimant)	
_____)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGESTS

1. When BAH is paid erroneously, waiver is appropriate only to the extent that the overpayments were applied by the recipient for the purposes intended.

2. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay and allowances, or any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official.

DECISION

A former member of the United States Air Force requests reconsideration of the June 14, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07040504. In that decision, DOHA waived collection of \$4,329.90 of the \$25,477.43 that the member was overpaid. The member seeks waiver of collection of the balance of the debt: \$21,147.53.

Background

The record shows that in July 2004, the member separated from her spouse and was placed in government housing. Since the member resided in government housing, she was not entitled to receive basic allowance for housing at the dependent rate (BAH-D). She did not receive this allowance through August 18, 2004, but due to administrative error, she erroneously received BAH-D from August 19, 2004, through September 13, 2005, causing an overpayment of \$17,093.03.

The record further shows that on September 14, 2005, the member moved out of government quarters and became entitled to receive basic allowance for housing at the single rate. However, due to administrative error, the member was erroneously paid BAH-D from September 14, 2005, through June 30, 2006, causing an overpayment of \$15,069.90. Applying the amount that the member was entitled to receive under BAH-I (\$10,393.33), plus additional credits, the net overpayment became \$4,329.90, which DOHA waived for reasons stated in the decision. This amount is not in issue in this request for reconsideration.

The last portion of the debt resulted from an administrative error in July 2006. For that month the member was entitled to receive pay and allowances in the net amount of \$1,747.42, and she received a mid-month payment in the amount of \$1,120.34 on July 15, 2006, leaving her a balance due of \$627.08. When the Defense Finance and Accounting Service (DFAS) attempted to post the debt that the member incurred for overpayment of BAH for the period September 14, 2005, through June 30, 2006, described in the previous paragraph, it erroneously issued her a payment on July 30, 2006, in the amount of \$4,681.58. Since the member was only entitled to receive \$627.08, she was overpaid \$4,054.50.

DOHA's adjudicator declined to grant waiver for the BAH-D erroneously paid to the member from August 19, 2004, through September 13, 2005, because the member failed to submit a copy of her lease, cancelled checks, and other documentation supporting her use of the BAH payments for the purposes intended. The adjudicator also declined to grant waiver of the July 2006 overpayment because the member received a significant unexplained increase in pay without questioning it (\$4,681.58 for last 15 days of July 2006 instead of the approximately \$1,120, that the adjudicator found that she normally received during 15 days, or an increase of about \$3,560).

In her reconsideration request, the member says that she no longer has the documentation that was requested but believes that it should be in her file. She also suggests that she had no real expectation of what she would normally receive for pay and allowances because she was

repaying the BAH debts and sometimes she would get half of what was normally owed to her, and at other times, she received nothing at all.

Discussion

Under 10 U.S.C. § 2774, we have authority to waive collection of erroneous overpayments of pay and allowances to 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 there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the member. *See* DoD Instruction 1340.23 (Instruction), ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting waiver. Instruction ¶ E4.1.3.

The record shows that during the period August 19, 2004, through September 13, 2005, the member was living in government quarters and did not provide receipts for expenses covered by BAH during that period. Accordingly, the adjudicator reasonably concluded that the member had failed to demonstrate that she used the BAH that she received during this period for the purposes intended.

While we agree with the member that her mid-month and end-of-month payments were somewhat unstable prior to the July 2006 overpayment, there is nothing in the record to suggest that a \$4,681.58 payment at the end of the month of July 2006 was normal or expected. Given the record, a reasonable person in these circumstances would not have expected to receive such a large amount considering the range of payments made to her in recent months preceding the July 2006 overpayment. Moreover, the record indicates, and the member acknowledges, that DFAS had initiated debt collection against her. The adjudicator reasonably concluded that the payment at the end of July 2006 was a significant unexplained increase in pay and allowances. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay and allowances, or any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. Instruction ¶ E4.1.5.

Conclusion

The member's request for additional waiver relief is denied, and we affirm the decision to deny waiver of \$21,147.53 of the member's total debt of \$25,477.43. 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: William S. Fields

William S. Fields
Member, Claims Appeals Board