

KEYWORDS: waiver of indebtedness-knowledge

DIGEST: Waiver is not appropriate when a member knows or should know that he is being paid in excess of his entitlements.

CASENO: 07082102

DATE: 8/27/2007

August 27, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No.07082102
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate when a member knows or should know that he is being paid in excess of his entitlements.

DECISION

A military member requests reconsideration of Defense Office of Hearings and Appeals (DOHA) appeal decision 07052108, dated July 27, 2007, which granted waiver in the amount of \$8,939.73 and denied it in the amount of \$2,312.00.

Background

The record indicates that the member was transferred to Hawaii in June 2006 and was ordered to occupy government quarters as of July 5, 2006. Because there were no unaccompanied quarters on base, the member's quarters were designated as unaccompanied

housing unsuitable for joint occupancy. Therefore, the member was entitled to receive Basic Allowance for Housing at the dependant rate (BAH-D) based on the rate for Gainesville, Virginia, where his wife resided. It was later determined that the designation of the member's quarters as unaccompanied quarters unsuitable for joint occupancy was incorrect. Therefore, the member was not entitled to BAH-D. He received the erroneous payments of BAH-D in the amount of \$11,251.73 between July 5, 2006, and November 30, 2006. The member was notified of the error on November 7, 2006. Our adjudicator waived the payments the member received from July 5, 2006, through October 31, 2006. She denied waiver of the amount erroneously received in November, because the member was aware before he received any pay in November that he was being paid in excess of his entitlements.

In support of his reconsideration request, the member points out that as soon as he was notified that he was being overpaid, he attempted to correct the situation by requesting permission to move out of government quarters. The request to move was denied. He recounts his other attempts to correct his entitlement.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous overpayments of pay and allowances to a military member 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, fault, misrepresentation, or lack of good faith on the part of the member. *See* DoD Instruction 1340.23 (Instruction), ¶ E4.1.2 (February 14, 2006). Waiver is usually not appropriate if the member knew or should have known that he was receiving payments in excess of his entitlements. Instruction ¶ E4.1.4.

In this case, the member was notified on November 7, 2006, that he was being overpaid. Our adjudicator properly denied waiver of payments received after that date. While the member acted responsibly after he was notified, waiver of BAH-D received in November is not appropriate. After November 7, the member knew that his continued receipt of BAH-D was at least questionable and should have set aside the amounts received for eventual repayment. *See* DOHA Claims Case No. 02062402 (July 18, 2002). The fact that the member was misinformed about his BAH entitlements does not provide a basis for waiver. *See* DOHA Claims Case No. 99052709 (June 9, 1999).

The member indicates that he is disputing the decision of the Defense Finance and Accounting Service to deny him BAH-D for the period in question. That action is separate from the waiver process. The waiver process is for debts already accepted as valid and is governed by the waiver statutes, the Instruction, and previous waiver decisions of this Office and the Comptroller General.

Conclusion

The member's request for additional waiver is denied, and we affirm the decision to deny

waiver of \$2,312.00 of the member's total debt of \$11,251.73. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

—s---

Michael D. Hipple
Chairman, Claims Appeals Board

—s---

Christine M. Kopocis
Member, Claims Appeals Board

—s---

Jean E. Smallin
Member, Claims Appeals Board