

KEYWORDS: waiver of indebtedness; erroneous payment

DIGEST: Under 10 U.S.C. § 2774, we have authority to waive the collection of erroneous payments of pay and allowances to a member under certain circumstances, but the amount requested for waiver must be an erroneous payment of pay and allowances, and not a claim by the member for amounts beyond such erroneous payments.

CASENO: 07103008

DATE: 11/14/2007

DATE: November 14, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07103008
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2774, we have authority to waive the collection of erroneous payments of pay and allowances to a member under certain circumstances, but the amount requested for waiver must be an erroneous payment of pay and allowances, and not a claim by the member for amounts beyond such erroneous payments.

DECISION

A reserve member of the United States Air Force requests reconsideration of the October 19, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07073101. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) which concluded that the member was not eligible for waiver relief under 10 U.S.C. § 2774 to reimburse him for an amount he paid in excess of his repayment obligation for an erroneous payment made to him by the government.

Background

The record shows that the member performed active duty during the period October 17, 2005, through November 24, 2005, and as a result, earned 3.5 days of leave. The member requested and was approved to take three days leave from November 21, 2005, through November 23, 2005. However, due to administrative error, this leave was not posted to the member's pay account until July 2006, and the member erroneously received a payment on December 9, 2005, in the gross amount of \$816.38, for 3.5 days leave, causing him to be indebted to the government in this amount.

The member contends that the Air Force collected \$1,019.10, to recoup the erroneous payment, or \$202.72 in excess of the amount paid to him. The DFAS administrative report states that the military pay office charged the member for three days of excess leave which resulted in the \$1,019.10 indebtedness. DFAS submitted an inquiry with the military pay office requesting clarification regarding the validity of the debt. The pay office replied that it had contacted the member regarding the dispute on the proper amount of the indebtedness and the pay office had determined that because the payment and debt crossed between two years, it would be in the best interest of the member to let the debt stand instead of adjusting prior year taxes.

Discussion

Under 10 U.S.C. § 2774, we have authority to waive the collection of erroneous payments of pay and allowances to a member if collection would be against equity and good conscience and not in the best interest of the United States. But, as DFAS and DOHA's adjudicator explained, there must be an erroneous payment of pay and allowances by the government. *See* DoD Instruction 1340.23, ¶ E2.1. The \$202.72 requested by the member under his waiver application is not an erroneous payment of pay or allowances. It is a claim by the member for \$202.72 that, arguably, was improperly collected from him. While the member appears to have a colorable dispute with regard to the proper amount of the debt, a waiver application is not the appropriate process to adjudicate the proper level of the debt. If the member is not satisfied with the military pay office's decision, he may file a claim for the \$202.72 in accordance with DoD Instruction 1340.21 so that the relevant factual and legal issues can be properly developed.

Conclusion

The member's request for waiver relief is denied, and we affirm the October 19, 2007, appeal decision. In accordance with DoD 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