

KEYWORDS: waiver of indebtedness; fault

DIGEST: Under 10 U.S.C. § 2774, the government may waive the collection of erroneous payments of pay and allowances, or erroneous payments arising out of travel and transportation allowances, to or on behalf of the member, if collection would be against equity and good conscience and not in the best interest of the United States. However, there must be no indication that the erroneous payment was solely or partially the result of the fault of the member.

CASENO: 07111506

DATE: 11/21/2007

DATE: November 21, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No.07111506
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 10 U.S.C. § 2774, the government may waive the collection of erroneous payments of pay and allowances, or erroneous payments arising out of travel and transportation allowances, to or on behalf of the member, if collection would be against equity and good conscience and not in the best interest of the United States. However, there must be no indication that the erroneous payment was solely or partially the result of the fault of the member.

DECISION

A reserve member of the United States Marine Corps requests reconsideration of the October 24, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07091911. In the appeal decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the government's

claim against the member for the erroneous payment of travel allowances during a series of inactive duty training (IDT) assignments.

Background

The member was issued a Government Transportation Request (GTR) from his home of record (HOR) in Idaho instead of his home training center (HTC), in a neighboring state, for travel to an IDT drill site at a Navy facility in Texas. The member was under the impression that reimbursement would be based on travel between his HOR and the IDT drill site; however, the member's IDT orders, dated August 18, 2006, state that while he may elect travel to or from an alternative location, reimbursement would be limited to the lesser of the actual distance traveled to the IDT site or the distance from the place of duty, the HTC in this case, to the IDT site. During the period from October 2006, through March 2007, each time the member traveled between his HOR and the Texas site, the member's travel expenses exceeded that which he would have been authorized if he had traveled between Texas and his HTC. As a result, the member was erroneously paid a total of \$4,360.65 more in reimbursements than he was entitled for travel between the HTC and the Texas facility.

In his reconsideration, the member does not dispute the debt and admits his oversight in not thoroughly studying the detail of his orders. He also believes that the government erred because his command had assured him that government funded travel to/from his HOR was authorized. The member indicates that repayment would cause him financial hardship.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances, or erroneous payments arising out of travel and transportation allowances, to or on behalf of the member, if collection would be against equity and good conscience and not in the best interest of the United States. However, there must be no indication that the erroneous payment was solely or partially the result of fraud, lack of good faith, misrepresentation, or, as in this case, the fault of the member. *See* 10 U.S.C. § 2774 (b)(1), and DoD Instruction 1340.23, ¶ E4.1.2 (February 14, 2006). The record indicates that the member believed in good faith that his travel expenses between his HOR and the IDT site in Texas would be fully covered, but unfortunately, he was incorrect. As the adjudicator concluded, if he had examined his orders, the member would have realized that reimbursement was limited to the travel costs between Texas and his HTC if the costs of travel between Texas and his HOR were more expensive. DOHA's adjudicator reasonably concluded that waiver would be inappropriate in such circumstances.

Under DoD Instruction 1340.23, ¶ E4.1.7, financial hardship is not a factor for consideration in determining whether a waiver is appropriate. The member should discuss the possibility of alternate repayment options with DFAS.

Conclusion

The member's request for relief is denied, and we affirm the October 24, 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