

Background

On July 4, 1988, the member was commissioned in the United States Navy. His pay entry base date (PEBD) was established as July 4, 1988, and he was paid as an Ensign while completing his medical education pursuant to the Uniformed University of Health Sciences Service Agreement. On May 16, 1992, after completing his education, the member entered active duty, and his PEBD was changed to May 16, 1992. He was paid correctly through May 31, 1993. Due to an administrative error in June 1993, the member's PEBD was erroneously changed to July 4, 1988, and his years of service were changed from one year of service to four years of service. As a result, he was overpaid through May 31, 2004 in the amount of \$57,900.93. In addition, on July 1, 1993, he erroneously received a retroactive payment of \$7,727.61 compensating him for the change in his PEBD for the period May 16, 1992, through May 31, 1993. On September 1, 1993, he erroneously received a retroactive payment of \$4,638.93 compensating him for the change in his PEBD for the period July 4, 1990, through May 15, 1992. Therefore, the total claim against the member is \$70,267.47.

Our Office agreed with DFAS and denied waiver of the overpayment on the basis that the member's years of service changed in June 1993 from one year to four years, his PEBD changed from May 16, 1992, to July 4, 1988, and his basic pay increased from \$2,061.00 in May 1993 to \$2,725.80 in June 1993. In addition, he received two large retroactive payments. Even though the member stated that he did not receive leave and earnings statements (LES) and only used direct deposit to his bank account, our Office found that he should have carefully reviewed his bank statements. Had he done so, he would have discovered the overpayment, thereby preventing the perpetuation of the error.

In his request for reconsideration, the member states that there is an inherent conflict of interest in giving DFAS, the agency that made the error, the power to investigate those errors and grant waivers for them. He takes issue with the DOHA adjudicator accepting DFAS's assurance that his debt calculation was correct. He states that he provided DOHA with irrefutable evidence that DFAS made an error in the calculation of the debt. He asserts that this evidence is contained in the Longevity Adjustment Worksheet which he attaches to his request for reconsideration. He states that it reflects that DFAS began crediting him with pay starting July 7, 1988, instead of July 4, 1988. He believes that DOHA should investigate his case further to find out if DFAS made other errors. He believes that he should not be held liable for the debt because when the erroneous payments started in June and August of 1993, he had just performed a permanent change of station (PCS) and was not receiving LESSs; he was attending Navy Dive School and his attention was on the demanding training he was receiving; he had just received a large specialty bonus check and was therefore unconcerned with checking his finances; he had to overcome a knee injury to complete his training; he was a new father; and he was assigned patients on many evenings and weekends giving him little opportunity to scrutinize his finances. He states that he would not have been able to detect the erroneous payments from his bank statements because his pay was irregular during the period due to him receiving the specialty bonus, a change in variable specialty pay, hazardous duty and dive pay. He was also expecting a large reimbursement for a protracted temporary additional duty (TAD) assignment and was due reimbursement for significant damages suffered to his household goods during a PCS move, as well as reimbursement for a do-it-yourself move (DITY) move into base housing.

Discussion

Under 10 U.S.C. § 2774, we have authority to waive repayment of erroneous payments of military pay and allowances to members of the uniformed services if repayment would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or the lack of good faith on the part of the member. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). A waiver is generally not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of 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. *See* ¶ E4.1.5 of Instruction. It is not against equity and good conscience to deny waiver when a reasonable person should have suspected that he was receiving payments in excess of his entitlements. *See* ¶ E4.1.4 of Instruction.

In his original waiver request, the member stated that he did not receive LESs during the time he was in training at the Naval Undersea Medical Institute (NUMI), July 1993 to December 1993. However, he did have access to his bank records. Although the member states that he would not have been able to detect any error in pay because he was receiving irregular deposits and expecting so many different types of payments, this should have given him further reason to inquire about the validity of the payments, especially since he was not receiving LESs. We note that in June 1993 prior to attending training at NUMI, his PEBD was changed to July 4, 1988, and his basic pay increased from \$2,061 in May 1993 to \$2,725.80 in June 1993. His June 1993 LES reflects retroactive payments totaling \$7,727.61, as well as the PEBD change. Assuming that the member also did not have access to his June 1993 LES, he still had a duty to monitor deposits to his bank account. The member does not mention the amounts of the payments he was expecting to receive and does not include any documentation concerning the payments. When the member received a \$8,398.47 deposit in his bank account for the month of June 1993, he had a duty to notify finance officials and ask for a detailed explanation of his pay. Finally, although the member has stated the reason why he was unable to check his LESs during the period he was attending training, there is no indication in the record why he did not check them after completing his training. His failure to do so was partly responsible for the continuation of the debt. *See* DOHA Claims Case No. 07030904 (March 20, 2007); DOHA Claims Case No. 07022701 (March 1, 2007); and DOHA Claims Case No. 03122207 (December 31, 2003).

Many of the member's concerns are beyond the authority of this Office and should be addressed to DFAS or service officials. Our Office does not have the authority to perform investigations. We base our decisions on the written record. As for the debt calculation, DFAS has explained that the amount of the debt listed on the Longevity Adjustment Worksheet, \$70,267.47 is the gross amount of the debt, and the amount listed on the DFAS-DE Form 0-641, Statement of Military Pay Account, \$59,632.86 is the amount of the debt after collections were made before the member left the service.

Conclusion

The member's request for relief is denied, and we affirm October 17, 2007, decision, except we remand this matter to DFAS to determine whether any of the administrative offset from the member's pay prior to his separation is affected by the limitations in 31 U.S.C. § 3716. As to the waiver itself, 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