

KEYWORDS: waiver of indebtedness; child support garnishment

DIGEST: A retired member’s child support garnishments erroneously continued to be paid on his behalf. It is not against equity and good conscience to deny waiver of the overpayment because the member received a benefit from the funds erroneously paid on his behalf.

CASENO: 07112606

DATE: 12/12/2007

DATE: December 12, 2007

)	
In Re:)	
[REDACTED])	Claims Case No.07112606
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A retired member’s child support garnishments erroneously continued to be paid on his behalf. It is not against equity and good conscience to deny waiver of the overpayment because the member received a benefit from the funds erroneously paid on his behalf.

DECISION

A retired member of the Navy requests reconsideration of the October 1, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07091306. In that decision, DOHA sustained the decision of the Defense Finance and Accounting Service (DFAS) to deny the member’s request for waiver in the amount of \$981.64.

Background

On March 31, 2001, the member retired from the United States Navy. Due to an administrative error, the member's pay account was not updated to reflect that he retired on March 31, 2001. As a result, his child support garnishment was erroneously paid on his behalf on March 30, 2001, and May 1, 2001, causing an overpayment of \$981.64.

In his reconsideration request, the member states the Navy made the error and he should not have to pay for their mistake. He had no knowledge that the Navy made extra child support payments on his behalf. His child's mother never notified him of the extra payments she received. The member states that the record from the Virginia Department of Social Services (VDSS) reflects that VDSS received his payments. In addition, he attaches two letters, one from DFAS - Retired Pay dated September 6, 2007, and the other from DFAS - Cleveland Center dated September 28, 2007. He also attaches what appears to be a copy of the carbon imprint of his check dated May 4, 2001, for \$446.13.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of military pay and allowances if repayment 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. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting waiver. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.3. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.

Although it appears that the member did write a check on May 4, 2001, in the amount of \$446.13, there is no evidence in the record that he duplicated the payments for child support during the period of overpayment. As the member points out, the VDSS record does reflect that payments were received for his court-ordered child support obligation. However, the VDSS record does not reflect duplicate payments received on his account during the period March 2001 through May 2001. In addition, we find nothing in the two DFAS letters submitted by the member that suggests that duplicate payments were received by the VDSS on his behalf. *See* DOHA Claims Case No. 02040431 (June 6, 2002). If the member still maintains that he duplicated the payments sent on his behalf to VDSS, he should contact VDSS. In any event, as the DOHA adjudicator had concluded, the member received the benefit of the money paid by DFAS to support his child on his behalf and it was not against equity and good conscience to deny waiver of the overpayment. *See* DOHA Claims Case No. 04031102 (March 22, 2004) and DOHA Claims Case No. 0422402 (March 10, 2004). We find no error in the appeal decision.

Conclusion

The member's request for relief is denied, and we affirm October 1, 2007, 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