

KEYWORDS: waiver of indebtedness; knowledge

DIGEST: A former member erroneously received active duty mid-month and end-of-month pay and allowances for about nine months after he was discharged. Waiver of the overpayments is not appropriate because he knew, or should have known, that he was receiving pay in excess of his entitlement. Therefore, he had the responsibility to bring these payments to the attention of appropriate officials, and to persist in questioning them until he received a thorough explanation for the payments.

CASENO: 0802043

DATE: 2/08/2008

DATE: February 8, 2008

_____)
In Re:)
 [REDACTED]) Claims Case No. 08020403
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A former member erroneously received active duty mid-month and end-of-month pay and allowances for about nine months after he was discharged. Waiver of the overpayments is not appropriate because he knew, or should have known, that he was receiving pay in excess of his entitlement. Therefore, he had the responsibility to bring these payments to the attention of appropriate officials, and to persist in questioning them until he received a thorough explanation for the payments.

DECISION

A former Reserve component member of the United States Air Force requests reconsideration of the January 22, 2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07121706. In that decision, DOHA waived collection of part (\$668.81) of the \$37,354.53 debt owed by the member to government, and denied waiver of the balance of the debt (\$36,685.72). The member requests reconsideration of the part of the debt not waived.

Background

The record indicates that the \$36,685.72 portion of the debt accrued when the member erroneously received active duty pay and allowances after his discharge on June 6, 2006. These mid-month and end-of-month payments started on July 15, 2006, and continued through April 15, 2007. In denying waiver, DOHA's adjudicator considered the member's arguments that his discharge dates had been changed and that his "paperwork was hurried as well as incorrect." The adjudicator found that the member provided no documentation to support such assertions. The adjudicator also found that the member failed to document, or articulate any basis, as to why he reasonably could have believed he was entitled to receive active duty pay in the amount and frequency he received during the period of the overpayment, especially when he was performing no active duty during that time.

In his request for reconsideration, the member explained why he believed that he was still on active duty through at least June 30, 2006; and he stated that he was told by a named official not to worry about his pay as "everything will work itself out and you will receive your leave." The member also stated that the order that discharged him from the Air Force was dated July 12, 2006, and he did not receive a copy of it until January 2007. The separation order and other documentation clearly state that he was discharged effective June 6, 2006.

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. The fact that the erroneous payment is the result of administrative error is not a sufficient basis, in and of itself, for granting a waiver. Waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous, or when a recipient of any 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 for eventual repayment if necessary. *See* Department of Defense Instruction 1340.23 (Instruction), ¶ E4.1.3 through ¶ E4.1.5.

We considered the member's additional explanations including his assertions that he expected some additional amounts due to unpaid "travel pay after a major surgery." However,

we agree with the adjudicator that the member did not reasonably explain his right to continue to receive mid-month and end-of-month active duty pay and allowances for about nine months after his discharge. Given the timing and amounts of the payments, a person in the member's circumstances should have realized that he was continuing to receive active duty pay and allowances to which he was not entitled. *Cf.* DOHA Claims case No. 99012022 (March 11, 1999), *aff'd* Deputy General Counsel (Fiscal) December 28, 2000. The member should have sought an explanation from a responsible official.

Conclusion

The member's request for relief is denied, and we affirm the January 22, 2008, decision. In accordance with Instruction ¶ 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