

KEYWORDS: waiver of indebtedness; payments must be valid when made

DIGEST: In order to be considered for waiver under 10 U.S.C. § 2774, a payment to a service member must be erroneous when made. Payments that were valid when made are not “erroneous” under 10 U.S.C. § 2774(a).

CASENO: 08081206

DATE: 8/14/2008

DATE: August 14, 2008

)	
In Re:)	
[REDACTED])	Claims Case No.08081206
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In order to be considered for waiver under 10 U.S.C. § 2774, a payment to a service member must be erroneous when made. Payments that were valid when made are not “erroneous” under 10 U.S.C. § 2774(a).

DECISION

A former member of the United States Navy requests reconsideration of the July 23, 2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08062601. In that decision, DOHA agreed with the recommendation of the Defense Finance and Accounting Service (DFAS) to waive a portion (\$1,391.17) of the member’s debt of \$27,814.72, but found that the remainder of the debt cannot be considered for waiver.

Background

The record shows that prior to his discharge on November 20, 2006, the member had been granted six days advance leave from October 2, 2006, through October 7, 2006. However, he was unable to earn the full six days prior to his discharge. As a result, the member became indebted to the United States in the amount of \$369.06 for 2.5 days advance leave which became excess due to his early discharge. Additionally, the member was indebted in the amount of \$24,480.21 for the unearned portion of a re-enlistment bonus and \$2,057.61 for unliquidated advances on a do-it-yourself move. An additional debt of \$1,391.17, which was paid to the member in error, was waived by DOHA, and is not involved here. After applying an additional credit of \$483.33, the member's outstanding indebtedness was \$26,423.55, which could not be considered for waiver.

In DOHA's decision, the adjudicator explained that the advance of the leave and the moving funds were legal and proper when made, and the member is not eligible for waiver of the debts he owed on each.¹ Similarly, the adjudicator also explained that recoupment of a re-enlistment bonus when a member separates prior to the end of his enlistment, is well-established as not arising from an erroneous payment. Erroneous payment by the government is a condition precedent to waiver under title 10, United States Code, Section 2774 (10 U.S.C. § 2774).²

In his reconsideration request, the member contends that the Navy discriminated against him in discharging him because he needed to spend more time with his recently-born son and the Navy would not grant him shore duty. The member contends that women in the same situation can avoid deployments and obtain shore duty assignments when they need to be with their children. The member questions whether he received all of his moving entitlements, and he also claims that the Navy discharged him "abruptly" and did not give him a chance to earn back the leave.

Discussion

As DOHA's adjudicator indicated, a statutory requirement for waiver consideration is that the debt against the service member must arise "out of an erroneous payment of any pay and allowances." *See* 31 U.S.C. § 2774 (a). The advancements of the leave and funds for moving were not erroneous, and similarly, the record contains nothing to suggest that the re-enlistment bonus payments were anything other than proper when the member received them. The adjudicator cited appropriate authorities to support her decision not to consider these debts for

¹Concerning the excess leave, the adjudicator cited and provided the member copies of the decisions in DOHA Claims Case No. 01072001 (August 21, 2001) and Comptroller General decision B-186224, Aug. 26, 1976, as applicable precedent. Concerning the advance payment on the move, the adjudicator cited and provided copies of DOHA Claims Case Nos. 07091101 (September 13, 2007) and 98051310 (May 27, 1998) as applicable precedent.

²The adjudicator cited and provided the member copies of DOHA Claims Case Nos. 07103007 (November 15, 2007) and 06053038 (June 2, 2006) as applicable precedent.

waiver. Even if those debts could have been considered for waiver, it would not have been appropriate to waive them based on personal or financial hardship. *See* DoD Instruction 1340.23, ¶ E4.1.7.

The member alleges that the government was at fault because it discriminated against him. If the member has any concerns about his discharge or his assignments on active duty, he should address them with the Navy. We have no authority to consider such matters in this decision.

Conclusion

The member's request for relief is denied, and we affirm the July 23, 2008, decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning waiver.

Signature: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signature: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signature: William S. Fields

William S. Fields
Member, Claims Appeals Board