

KEYWORDS: waiver of indebtedness

DIGEST: A member was receiving basic allowance for housing at the dependent rate (BAH-D). When the member divorced, he was no longer entitled to BAH-D, but was entitled to the lesser entitlement of BAH at the differential rate (BAH-Diff) to support his dependent daughter. An overpayment arose when the government erroneously failed to reduce the member's entitlement to BAH-Diff from BAH-D. Waiver of the resulting debt is appropriate only to the extent that the allowance was spent for its intended purpose.

CASENO: 08082501

DATE: 8/28/2008

DATE: August 28, 2008

_____)
In Re:)
 [REDACTED]) Claims Case No.08082501
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member was receiving basic allowance for housing at the dependent rate (BAH-D). When the member divorced, he was no longer entitled to BAH-D, but was entitled to the lesser entitlement of BAH at the differential rate (BAH-Diff) to support his dependent daughter. An overpayment arose when the government erroneously failed to reduce the member's entitlement to BAH-Diff from BAH-D. Waiver of the resulting debt is appropriate only to the extent that the allowance was spent for its intended purpose.

DECISION

A service member in the United States Navy requests reconsideration of the May 21,

2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08040109. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS) and waived collection of \$4,532.20 of the \$17,600.20 of indebtedness that the member incurred as a result of receiving erroneous payments of Basic Allowance for Housing at the dependent rate (BAH-D). DOHA declined to waive the balance of the debt, \$13,068. The member seeks waiver of at least an additional \$11,611.08.

Background

The record indicates that the member received BAH-D on behalf of his dependents. On September 15, 2006, the member was divorced, and as a result, he was no longer entitled to receive BAH-D. However, due to administrative error, he erroneously received BAH-D from September 16, 2006, through July 31, 2007, causing an overpayment of \$20,198.50. During the period of the overpayment, the member was entitled to receive Basic Allowance for Housing at the differential rate (BAH-Diff) in the amount of \$2,598.30, and that amount was applied to the overpayment, reducing it to \$17,600.20.

In determining the amount waived, DOHA's adjudicator followed the rule that the intended purpose of BAH-D is to help the member defray the cost of providing quarters for his dependents when government quarters are not furnished. The documentation provided by the member showed that he had paid \$7,000 over the period September 16, 2006, through July 31, 2007, in support of his child as ordered by a state domestic relations court. However, the member had not demonstrated that any additional amounts of the BAH-D allowance were expended for the intended purpose of this allowance.

In his July 15, 2008, correspondence to DOHA, the member requested reconsideration based on additional documentary evidence (which he included) that he contends is proof that he expended at least an additional \$11,611.08 in support of his child. The adjudicator examined the additional documentation (bank statements from the member's credit union) and found that only \$6,970.40 of the \$11,611.08 involved withdrawals or transfers made to his former spouse. The adjudicator advised the member that before any of that amount would be considered for waiver, the former spouse must provide a notarized statement acknowledging receipt of that amount on behalf of their child, and an explanation of how she expended the funds on the child's behalf. The adjudicator also found that the balance of the \$11,611.08 was for debits, withdrawals, and various purchases, including airline tickets, with no proof how those expenditures were related to the intended purpose of BAH-D.

On August 25, 2008, the member faxed a copy of a notarized affidavit in which he stated that his former spouse "will not cooperate and provide the requested information." The member also stated that the payments that his former spouse received were "for the support of our child, and it is my understanding that the funds were expended as such."

Discussion

Under 10 U.S.C. § 2774, we have authority to waive collection of erroneous payments of pay and allowances to a member if collection would be against equity and good conscience and not in the best interest of the United States. In this case, DOHA's adjudicator waived the member's debt for the erroneous payment of BAH-D to the extent that the member provided child support. The additional documentary evidence provided by the member shows payments to the former spouse in the total amount of \$6,970.40, but there is no record evidence on how such payments were expended. Furthermore, the balance of the bank statements show expenditures to named commercial establishments, including some to airline companies, restaurant facilities, parking facilities, and rental car companies, as well as expenditures in the form of non-specific withdrawals, but none of these demonstrate how the child received a direct benefit. *Compare* DOHA Claims Case No. 06110906 (November 27, 2006). Accordingly, we see no basis for further waiver of the member's debt.

Conclusion

The member's request for further relief is denied and we affirm the May 21, 2008, decision. In accordance with DoD 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