

Date: May 20, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97011405

CLAIMS APPEALS BOARD DECISION

DIGEST

Service member who received discharge pay and allowances, and appropriate documentation, at his out-processing briefing is considered partially at fault for not questioning an end-of-month payment received after discharge. Waiver is denied.

DECISION

This is in response to an appeal of the U.S. General Accounting Office's (GAO) Settlement Certificate, Z-2943469, dated August 8, 1996, which denied waiver under 10 U.S.C. 2774 of a service member's debt to the United States resulting from erroneous payments of pay. Pursuant to Public Law 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay (salary) or allowances, including travel, transportation or relocation expenses and allowances, was transferred to the Director, Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

Background

On September 7, 1994, the service member was discharged. At the time of discharge, he received a final payment for 7 days of pay and allowances and 45 days of accrued leave, less deductions and applicable taxes. The Finance and Accounting Office (FAO) failed to remove the member's name from the pay system, which erroneously issued the member an end-of-month payment of \$1226.95, \$926.95 plus allotments of \$300. The erroneous overpayment was discovered by the Defense Finance and Accounting Service during a routine after-separation audit in December 1994.

GAO waived the \$300 overpayment of allotments, but denied waiver of the \$926.95, stating that the member should have known he was not entitled to receive any additional pay after discharge.

The service member appeals the denial arguing that he had no reason to dispute the end-of-month payment. He states that he was given a finance briefing by a representative of the office and a financial outline showing that the discharge payment was for 7 days pay and accrued leave. The member further claims that the representative informed him that he would not receive any separation pay but would receive end-of-the month pay for September. He states that he believed the \$1226.95 was the end-of-month pay for September. The member believes he was entitled to the pay because he received it after he had been informed verbatim in his out-processing briefing that he would receive it.

Discussion

We may grant waiver of a debt arising out of an erroneous payment of pay and

allowances to members or former members if collection 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. See 10 U.S.C.

2774 (1995). In the present case the erroneous payment was made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the member's part in that regard.

The standard employed to determine whether a member was at fault in accepting an erroneous payment is whether, under the particular circumstances involved, a reasonable person should have been aware that he was receiving payments to which he was not entitled. See Standards for Waiver, 4 C.F.R. 91.5(b)(1996); DOHA Claims Case No. 97013104 (March 20, 1997); and Jeffrey S. Hopf, B-260184, July 28, 1995. We have consistently held that when a member knows or reasonably could be expected to know he is receiving pay in excess of his entitlement, he has a duty to retain such amounts for subsequent refund to the government.

The member received appropriate discharge pay and saw documentation of the pay and allowances due him. We find that it was not reasonable for the member to accept without question an end-of-month payment in addition to pay for the 7 days he worked in September 1994. During the out-processing briefing, we believe a reasonable person who had received pay for the days worked his last month of service would have questioned why he should expect a regular end-of-month payment in addition. The member makes no claim that this payment was documented on the financial outline he received, but states that the representative verbally told him to expect it. When he received the end-of-month payment, the member should have questioned the appropriate official. In the absence of such inquiry, the member is deemed to be partially at fault.

We regret that the member may have received erroneous information during his out-processing briefing; however, his request for waiver has received careful consideration. The settlement correctly denied the member's application for waiver of the overpayment of pay since the member failed to inquire and is considered at least partially at fault.

Conclusion

We uphold the denial of the waiver request.

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member Claims Appeals Board