

DATE: March 20, 1997

In Re:

[Redacted]

Claimant

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Claims Case No. 97013101

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A former Navy member received Basic Allowance for Quarters at the with-dependent rate while he lived in government quarters and supported no dependents. The fact that he was initially misinformed as to his entitlements does not provide a basis for waiver, since a reasonable person in his situation would have set the money aside while he sought further verification of his entitlements with the appropriate authorities. Since he did not pursue the issue with the proper authorities, waiver under 10 U.S.C. 2774 is precluded.

### DECISION

This is in response to an appeal of the U.S. General Accounting Office's (GAO) Settlement Certificate Z-2942203-025, June 19, 1995, which denied the request of a former Navy member for waiver of a debt of \$883.99, which arose when he received Basic Allowance for Quarters (BAQ) at the with-dependent rate on behalf of his wife while he was separated from her and providing no support for her, nor did he have any other dependents at the time. Pursuant to Public Law No. 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

The former member was separated from his wife in May 1993 and retained custody of their children. When it was determined that he was not the children's biological father, they entered foster care and ceased to be his dependents. In November 1993, he entered into a marital separation agreement under which he had no obligation to support his wife. Also in November 1993, he vacated military family quarters and moved into military barracks. Although he then had no dependents, he was erroneously paid BAQ at the with-dependent rate from December 10, 1993, through February 15, 1994, resulting in a debt of \$883.99. He states that he explained his situation to a disbursing officer, who erroneously informed him that he was entitled to BAQ at the with-dependent rate as long as he had a wife, even if he was not supporting her. The record indicates that the disbursing officer admits that she gave him the erroneous advice. He bases his waiver request on the fact that he was misinformed as to his entitlement. The overpayments were deducted from his pay when he was separated from the Navy, and he requests reimbursement.

### Discussion

Under 10 U.S.C. 2774, we may waive collection of erroneous payments of pay and allowances made to a member or former member if collection would be against equity and good conscience and not in the best interest of the United States. The statute further provides that waiver cannot be granted if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member. See Standards for Waiver, 4 C.F.R.

91.5(b). The standard employed to determine whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement. See Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, Jan. 17, 1995.

The purpose of BAQ at the with-dependent rate is to partially reimburse a member for the expense of providing private quarters for his dependents when government quarters are not provided; it is not to be paid "as a bonus for the technical status of being married." When a member receives BAQ at the with-dependent rate for a period during which he is not supporting a dependent, the service is to recoup the allowance from him.<sup>(1)</sup> In reporting their denial of waiver, the Service states that Navy members are aware of the purpose of BAQ, and that therefore the member could not have reasonably accepted the erroneous information that he was entitled to the payments in these circumstances without seeking further confirmation. GAO agreed that while the member apparently was misinformed as to his entitlement on his visit to the personnel office, he could not reasonably have expected to receive BAQ at the with-dependent rate while he was living in government barracks and not supporting any dependents, and he should have made further inquiries, setting aside the questionable BAQ he was receiving until the matter was resolved. Since he did not do so, GAO agreed that he is at least partly at fault in accepting the overpayments, precluding waiver.

We have reviewed the file and find no error of fact or law in the GAO's settlement.

### Conclusion

Waiver is denied.

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Christine M. Kopocis

Acting Chairman, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_

Joyce N. Maguire

Member, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

1. The Department of Defense Military Pay and Allowances Entitlements Manual (Pay Manual), paragraph 260406. At the time in question here this information was found in paragraph 30236 of the Pay Manual.