

Date: June 9, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97032501

CLAIMS APPEALS BOARD DECISION

DIGEST

A member erroneously received longevity credit for pay purposes for four years he spent in medical school, and the error was reflected on his Leave and Earnings Statements. The resulting overpayments may not be waived under 10 U.S.C. 2774 because the member had a duty to verify the information on his Leave and Earnings Statements and to bring any errors promptly to the attention of the proper authorities.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97016111 (March 11, 1997), in which we denied the request of an Army member for waiver of a debt of \$29,035.92 which arose when he was overpaid due to an incorrect pay entry date.

Background

The member attended the Uniformed Services University of the Health Sciences (USUHS) School of Medicine from 1983 through 1987. The record indicates that he received a pamphlet at new student orientation which indicated that he would receive longevity credit for pay purposes for those four years of schooling, but during the first year of school he was informed that he would not receive longevity credit for his years in medical school due to the enactment of the Defense Officer Personnel Management Act.⁽¹⁾ According to the record before us, the USUHS classes of 1986 and 1987 filed class action requests for longevity credit with the Army, Air Force, and Navy Boards for Correction of Military Records. The Boards allowed credit for the class of 1986, but denied credit for the class of 1987.⁽²⁾ The member submitted an individual request for longevity credit with the Army Board for Correction of Military Records on April 20, 1990. He was notified of the denial on April 14, 1991. According to the record, the member states that he realized in 1991 that he was being paid more than some other members in his situation due to longevity credit for his time at the USUHS and by that time had been overpaid by over \$22,511. He states that he contacted his finance office several times in 1993 to correct the error. In January 1995, DFAS notified the member that he had been overpaid \$29,035.92 due to the four years of longevity credit he had erroneously received. In the Settlement Certificate, we denied his waiver request because he was partially at fault for not verifying the accuracy of his Leave and Earnings Statements (LES). We said that the standard we employ to determine fault is whether a reasonable person should have been aware that he was being overpaid.

In his appeal, the member argues that he was not familiar with the information on his LES and should not be held to the "reasonable person" standard because of his rigorous schedule. He points out that the Air Force Board has corrected the records of some Air Force members from the class of 1987 to give them longevity credit for the time they spent in medical school. He states that repayment will be a hardship and requests a hearing.

Discussion

Under 10 U.S.C. 2744, 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.

It is a rule of long standing that military members have a duty to verify the information on their LES. If a member is provided information which if reviewed would indicate an error, waiver of a resulting overpayment is precluded because the member is at least partially at fault in the accrual of the debt. See John P. Rieder, B-259199, Feb. 22, 1995. The rule applies to members of all ranks and military duties. Lack of understanding of the LES does not relieve a member of the duty to review them. See Petty Officer Ricky Johnson, USN, B-256417, July 22, 1994.

In the present situation, the member had a duty to review and verify the information on his LES in a timely manner. Since he did not do so, he is at least partially at fault, and his debt may not be waived. Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, supra. The "reasonable person" standard which we employ to determine fault is a common concept throughout the law, and the member's position does not exempt him from it. While we understand the member's description of the arduous demands placed on a neurosurgery resident, those demands do not relieve the member of his duty to verify the information on his LES during the period in question.

The member states that he realized in 1991 that he had been given credit for the four years. The Army Board denied him correction in 1991, but he states that he still believed the Board would reverse its decision. He apparently did not bring the overpayment to the attention of finance officials until 1993, when in his view the Board's decision became final. If he had verified his LES earlier and promptly brought the incorrect date to the attention of the proper authorities, most if not all of the overpayment could have been prevented. Since he did not verify the information on his LES and apparently did not promptly notify the proper authorities when he did notice a discrepancy, he is at least partially at fault, and waiver is precluded. John P. Rieder, B-259199, supra. In such circumstances, collection is not against equity and good conscience.

The fact that some Air Force members of the class of 1987 may have received longevity credit due to action by the Air Force Board for Correction of Military Records does not provide a basis for waiver of the member's debt. Correction Board action is discretionary, and the Army Board has denied the member's correction request. Differences between the Services exist with regard to administrative policy and regulations, and this Office will not interfere with the military in discretionary administrative matters. Senior Chief Petty Officer John J. Chiumento, USN (Retired), B-244598, Oct. 2, 1991.

The member points out that repayment will be a hardship for him and his family; however, financial hardship does not provide a basis for waiver. Petty Officer Patrick K. Reedy, USN (Retired), B-257862, supra. The member can contact DFAS to request that he be allowed to repay the debt over an extended period of time. DFAS has authority to make such determinations in accordance with the relevant regulations.

Under our regulations, decisions are rendered on the basis of the written record only. Decisions are based on the written record submitted by the government agency involved as well as evidence submitted by the claimant. 4 C.F.R. 31.7.

Conclusion

We affirm the Settlement.

/s/ _____

Christine M. Kopocis

Member, Claims Appeals Board

/s/ _____

Joyce N. Maguire

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. Pub. L. No. 96-513, 402, 94 Stat. 2904 (1980). For a discussion of the legislative history of section 402, see Jeffrey D. Rushlo, 61 Comp. Gen. 461, 466 (1982).

2. We have been informally advised that the Air Force Board has corrected the records of individual members of the USUHS class of 1987 on a case-by-case basis to give them the longevity credit. It appears that the factual situation regarding those Air Force members differs from the facts of this case.