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In Re:

[Redacted]

Claimant

DATE: July 1, 1997

Claims Case No. 97042817

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Recoupment of a service member's debt for the erroneous overpayment of per diem is not against equity and good conscience, and waiver of the debt is not proper under 10 U.S.C. 2774, when the service member is provided government quarters for his use during his temporary duty but the service member continues to collect per diem. In such circumstances, the service member's application for waiver is not supported by his allegation that a named person lead him to believe that he was entitled to receive "travel compensation," when there is nothing in the record to corroborate the member's version of the events, there are no statements from any pay and disbursing official corroborating the member's statement and there is no proof of what he told them and what they told him.

### DECISION

, United States Navy, the service member, appeals the U.S. General Accounting Office's (GAO) settlement which allowed waiver of only \$436.80 of the \$3,882.43 debt he owes to the government as a result of the erroneous payment of advance per diem for temporary duty (TDY) while he was a student at the Naval Submarine School in New London, Connecticut.<sup>(1)</sup> 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 or allowances, including travel, transportation or relocation expenses and allowances, was transferred to the Director, Office of anagement 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 effective December 18, 1996. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.<sup>(2)</sup>

### Background

The record indicates that the service member received permanent change of station (PCS) orders ultimately transferring him to a submarine, but they included TDY en route at the Naval Submarine School. The service member reported to the Submarine School on January 22, 1994, and detached for further TDY on April 3, 1994. During this period, he resided in commercial lodging for 13 days, then he was assigned no cost family type government quarters on February 3, 1994. At the recommendation of the Defense Finance and Accounting Service (DFAS), Cleveland Center, GAO waived \$436.80 for the 13 days of commercial lodging,<sup>(3)</sup> but it denied relief for balance of the indebtedness, \$3,445.63, on the basis that it was not reasonable for the service member to expect to receive per diem while he was provided government quarters.

On appeal, the service member contends that he was transferred "under unusual circumstances in that there were no written orders and no corresponding travel pay allotment, only accounting data to complete the PCS move." The service member said that an original copy of his December 1993 PCS orders were not available to him when he departed the previous duty station and that he did not receive a travel advance. He also contends that other students at the Submarine School were receiving per diem while he was there. (The service member did not describe with documentary support what payment he received and when he received it.) He says that he "was lead to believe this money was travel compensation by. . . [a named individual]. . . at Submarine School PSD, Groton where disbursement originated." He says that he did not know about the overpayment until December, 1994 when his travel claim was adjudicated; that he

acted in good faith by contacting the disbursing activity to investigate the reason for the payments; that he should not be held accountable for the complexity of travel entitlements; that repayment imposes financial hardship; and that there is precedent to waive the entire debt based on circumstances which are the same as his.

### **Discussion**

Our waiver authority applicable to military pay and allowances, 10 U.S.C. 2774, applies to a claim against a service member "arising out of an erroneous payment" the collection of which 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 should have known or suspected that he was receiving more than his entitlement. See Petty Officer Ricky Johnson, USN, B-256417, July 22, 1994; Captain Douglas K. Basiger, USAF, B-256600, July 14, 1994.

We agree with GAO that it is unreasonable for the service member to expect to be compensated for quarters on TDY when the government provides quarters at no cost. The service member contends that he acted in good faith by contacting the disbursing activity to investigate the reason for the payments, but he did not describe when he did this or who he contacted. The mere allegation that a named person lead the service member in some undescribed manner to believe that he was entitled to receive "travel compensation" is no basis on which we can grant the relief requested. As in Petty Officer Ricky Johnson, B-256417, supra, there is nothing in the record to corroborate the member's version of the events; there are no statements from any of the pay and disbursing officials to whom the service member suggests that he directed his questions; and there is no proof of what he told them and what they told him. Compare also James A. Jamiel, B-235158, Feb. 6, 1990. The service member did not cite us to any Comptroller General decision or other precedent granting waiver under these circumstances, and we are not aware of such precedent.

The result here does not change even if the service member did not have a copy of his PCS orders when he left his old duty station. Per diem helps the service member meet expenses like lodging at a temporary duty location. Without considering whatever complexities may be involved in the travel regulations, when the government suddenly provides lodging in kind at a temporary duty location, a person must reasonably expect his per diem payment to decrease from that point in time because the government is meeting its lodging obligation by providing the lodging itself.

The allegation that other students at the Submarine School may have received per diem for their temporary duty there, is irrelevant. For one thing, the other students may not have been similarly situated with respect to their final permanent duty station, and even if they had been, an improper payment to any of them does not justify an improper payment to the service member. See Billy M. Nims, SP-6, B-167706, Dec. 3, 1969. Finally, a personal or family financial hardship is no basis for waiver. See DOHA Claims Case No. 97041401 (June 26, 1997); Major James P. Burton, USAF, B-265873, Feb. 29, 1996; Timothy Piekarski, B-261958, Nov. 8, 1995.

### **Conclusion**

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. Settlement Certificate Z-2944022-025, September 11, 1996.
2. The legal basis of the transfer is further described in B-275605, Mar. 17, 1997.
3. DFAS reports that the service member was not entitled to any per diem while on TDY from January 22, 1994 through April 3, 1994, because he was in the area of his ultimate permanent duty station.