

DATE: September 16, 1997

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In Re:

[Redacted]

Claimant

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Claims Case No. 97050801

## CLAIMS APPEALS BOARD DECISION

### DIGEST

1. In the absence of evidence to dispute a member's statement that he did not know of an overpayment in his final payment when he did not receive a leave and earnings statement for the period, we uphold the waiver granted in the Settlement Certificate. Opinions of the Defense Finance and Accounting Service with no supporting evidence are insufficient to overcome the determination in the Settlement.

2. The function of a Settlement Certificate and the adjudicators of our Office is one of fact finding, and the function of this Board is to review the reasonableness of the factual findings in the Settlement in light of the facts as documented in the record.

### DECISION

The Defense Finance and Accounting Service (DFAS) appeals DOHA's Settlement Certificate, DOHA Claim No. 97016121, dated February 11, 1997, which granted waiver under 10 U.S.C. § 2774 of a former member's debt to the United States resulting from erroneous payments of pay.

#### Background

The record indicates that the member was discharged on July 5, 1995. At that time, he was entitled to receive a final separation payment of \$957.60, representing 5 days of pay and allowances plus 12.5 days of unused leave. However, due to an administrative error, the member was paid \$2,588.52. As a result, he was overpaid \$1,630.92.

The DFAS Kansas City Center denied the member's request for waiver, deciding that he should have contacted the proper authorities questioning his entitlements. DFAS noted that the member's normal monthly pay was \$1,614.00.

The member appealed DFAS's denial to our Office arguing that he did not receive a Leave and Earnings Statement (LES) during the period of erroneous payment and that his final entitlements included dependent travel and lodging, his own travel and lodging, 5 days active duty pay, 12.5 days unused leave, and partial move pay. We granted waiver stating that there is no evidence to substantially support a finding that the member was aware he was receiving pay in excess of his proper entitlement.

DFAS requests that we rescind the determination in our Settlement Certificate and deny the waiver request. It is DFAS's opinion that the member was provided a copy of how his final separation payment was computed and this documentation was issued to him at the time he was issued his final settlement check. DFAS refers to the fact that "Procedures are in place for the service member to review the computation document for correctness and to see how the payment was computed." DFAS states that administrative procedures are in place to insure that the member would have been fully counseled on the aspects of travel entitlements, filing procedures, and the payment of those allowances. DFAS also states that travel allowances are paid separately from a member's final military pay and any claim the member would have been entitled to concerning travel allowances would have been addressed in separate correspondence apart from his final military pay.

## Discussion

Our waiver authority, 10 U.S.C. § 2774, applies to a claim against a person arising out of the erroneous payment of pay and allowances, 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, former member or other person receiving the overpayment. See Standards for Waiver, 4 C.F.R. §91.5(b). The standard employed to determine whether a person 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; Bryan E. Lippman, B-201816, July 8, 1981.

In addition, this Office bases decisions on the written record. In this case, the member states that he received no LES and believed the \$2,558.52 covered his outstanding pay and travel. His statement alone was submitted. DFAS argues that he received information about how his final payment was disbursed, including the fact that travel payments are made separately from salary payments. DFAS submits no documentation or other evidence to support these opinions, no statements from the appropriate officials who allegedly provided final payment information to the member, and no documentation that the member received an additional payment for his travel payments.

The member's debt was waived in the Settlement Certificate based on the fact that there was no evidence to substantially support a finding that the member was aware he was receiving pay in excess of his proper entitlement. There was no indication that he received any documentation showing how his final pay was computed. This Office believed the member reasonably may not have been aware he had received pay in excess of his proper entitlement, and acted in good faith in accepting the overpayment.

The function of a Settlement Certificate and the adjudicators of our Office is one of fact finding. While other individuals as fact finders might conclude differently, in light of the circumstances as described above, we believe that the findings of the Settlement Certificate in this case are reasonable. In light of equitable standards in title 10 United States Code 2774 and in the absence of documentation submitted on appeal which would dispute the member's claim that he did not know of the overpayment, we concur with the waiver granted in the Settlement Certificate.

## Conclusion

We affirm the Settlement Certificate.

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

Michael D. Hipple

Chairman, Claims Appeals Board

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

Christine M. Kopocis

Member, Claims Appeals Board

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

Jean E. Smallin

Member, Claims Appeals Board