

In Re:

[Redacted]

Claimant

DATE: July 21, 1997

Claims Case No. 97071007

CLAIMS APPEALS BOARD DECISION

DIGEST

Recoupment of a service member's debt for the erroneous overpayment of pay and allowances 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 suspected that a payment of pay and allowances was erroneous and contacted pay and disbursement officials to verify his entitlement to the payment, but there is nothing in the record to corroborate the member's attempt at verification, no statements from any pay and disbursing official in this regard and no proof of what he told them and what they told him.

DECISION

a retired service member in the United States Army, appeals the decision of the Defense Office of Hearings and Appeals (DOHA), which disallowed his request that the government waive the debt he incurred as a result of the erroneous payment of \$2,710.46 of pay and allowances that he received after his discharge on November 30, 1993. [\(1\)](#)

Background

The Defense Finance and Accounting Service (DFAS) - Indianapolis Center, reports that following his discharge after 23 years of service, the service member received a payment in the amount of \$2,348.90 on December 2, 1993, representing all pay and allowances still outstanding. Thereafter, the service member received another payment for \$2,710.46 on December 9, 1993. The service member states that he questioned the December 9 payment when he received it, but he says that he was informed by a clerk, a supervisor and the person who was responsible for his out processing at Fort Bragg that the December 9 payment was his final pay. The service member explains that he rejected the clerk's initial advice to take the money and say nothing, and that he asked for confirmation from officials whom he considered to be more knowledgeable before he fully accepted the payment. The service member was formally advised in May 1994 that he was overpaid.

The member asked that the Department of Defense waive his debt because he had taken reasonable measures to verify whether he was entitled to the December 9 payment, and as a result, he concluded that he was entitled to it. He also stated that he had experienced financial difficulties since he left the Army. DOHA's adjudicators considered these arguments but found that the service member should have pursued the matter further especially since he had just received a payment on December 2, 1993. The service member appeals but offers no factual or legal basis to support the appeal.

Discussion

The service member offered no basis for his appeal, and our review of this matter indicates that the Settlement is legally sufficient. Our waiver authority applicable to military pay and allowances, 10 U.S.C. 2774, applies, among others, to a claim against a service member arising out of an 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 legal precedent is well-established that it is not against equity and good conscience to recover such indebtedness where the recipient of the erroneous payment knew or should have known that the payment was erroneous, and the knowledge of such an overpayment carries with it the obligation to return that amount, or set aside an equivalent amount for refund to the

government when the error is corrected. See, for example, DOHA Claims Case No. 97052732 (July 8, 1997); DOHA Claims Case No. 97011404 (April 4, 1997); and Major Kenneth G. Brown, USAF, Retired, B-238127, June 28, 1991. And, 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.

In those instances where an applicant successfully demonstrates reasonable reliance on the erroneous assurances of pay officials concerning his entitlement, the record clearly corroborates a service member's attempt at verification. Typically, such a record includes statements from the pay and disbursing officials to whom the service member directed his questions (or other corroboration by the Agency) which demonstrate what the member told them

and what they had advised him. Compare also DOHA Claims Case No. 97042817 (July 1, 1997) and James A. Jamiel, B-235158, Feb. 6, 1990. This record lacks such verification.

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; and Timothy Piekarski, B-261958, Nov. 8, 1995.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. See Settlement Certificate on DOHA Claim No. 97010652, January 30, 1997.