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In Re:

[Redacted]

Claimant

DATE: July 8, 1997

Claims Case No. 97052732

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A service member who knows that he received an erroneous payment of pay and allowances is obliged to return that amount, or set aside an equivalent amount for refund to the government when the error is corrected.

### DECISION

, a retired senior chief petty officer in the United States Navy, appeals the U.S. General Accounting Office's (GAO) settlement which allowed waiver of only \$156.30 of the \$1,618.35 debt he owes to the government.<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 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 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 retired on October 31, 1994, with his transfer to the Fleet Reserve. It is undisputed that the Navy miscalculated the service member's final active duty pay, overpaying him by \$156.30. Additionally, on November 15, 1994, the service member received an erroneous direct bank deposit of \$1,462.05, the amount that he would have been paid if he had remained on active duty.<sup>(3)</sup> GAO agreed that the \$156.30 debt, which resulted from miscalculation, should be waived, but it declined to waive \$1,462.05, the amount of the erroneous active duty pay received in November 1994. After GAO considered the service member's application, the Defense Finance and Accounting Service (DFAS) - Cleveland Center discovered that it owed the service member additional credits for reasons unrelated to this appeal, and it reduced the indebtedness to \$996.10.

On appeal, the service member requests that the \$996.10 also be waived. He contends that he immediately notified the DFAS of the erroneous payment of the active duty pay, and that he cooperated with DFAS by providing it whatever documentation was required.

### Discussion

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. 97011404 (April 4, 1997); Major Kenneth G. Brown, USAF, Retired, B-238127, June 28, 1991.

The service member knew that he had received an erroneous direct deposit payment and immediately notified DFAS of the problem. Even though the service member did exactly what he should have done, as the authorities cited above indicate, he acquired no right to retain the amount erroneously paid to him. Accordingly, waiver is not appropriate.

### **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-2943517-025, March 26, 1996.

2. The legal basis of the transfer is further described in B-275605, Mar. 17, 1997.

3. The service member states that the erroneous payment was on November 1, 1994, and that he notified DFAS of the erroneous payment on the same day. We accept his version of the facts for purposes of this appeal.