

DATE: October 1, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97090810

CLAIMS APPEALS BOARD DECISION

DIGEST

A member who separated from the service received final pay, then received active duty pay at the end of the month for days after she had already separated from the service. Waiver of such an overpayment is inappropriate since a person of her experience reasonably knew or should have known that she was receiving pay in excess of her entitlement. The member should have at least questioned payment of such active duty pay. The member did not acquire title to the money she received and is obligated to return it.

DECISION

This is in response to an appeal of Claim Settlement, DOHA Claim No. 97012131, May 7, 1997, which allowed in part, and denied in part, waiver of a service member's debt.

Background

[Redacted], United States Army, separated from the Army on June 23, 1992. Records show that she earned \$33,698.99 for the period June 16 through June 23, 1992. That amount included a special separation benefit. An advance pay balance of \$ 937.50 was due upon separation. In addition, allotments and excess leave charges should have been deducted from the member's final separation payment which were not deducted, creating a debt of \$2,590.69. Thus, the member should have received a final separation payment of \$31,108.30, (\$33,698.99 - \$2,590.69) but due to administrative error she was paid \$31,991.84. As a result, she was overpaid \$883.54. In addition, on June 30, after separation from the Army, she erroneously received active duty pay in the amount of \$1,547.88, increasing the total debt to \$2,431.42. The Claims Settlement allowed waiver of \$883.54, and denied waiver of \$1,547.88.

Discussion

Section 2774 of title 10 of the United States Code provides authority for waiving claims for erroneous payment of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arises from an administrative error with no indication of fraud, fault, misrepresentation or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. The standard employed to determine whether a person was "at fault" in accepting an overpayment is whether, under the particular circumstances, 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; DOHA Claims Case No. 97052730 (July 10, 1997). A service member who knows that he is receiving payments in error has the duty to retain such amounts for refund. A service member is not entitled to waiver as a matter of right whenever he receives an overpayment as a result of an administrative error. See DOHA Claims Case No. 97012103 (June 26, 1997).

The Defense Finance and Accounting Service report stated that the member had been in an excess leave status for a long period; that she should have noticed that the leave she had taken had not been posted at the time of her separation; and that she had sufficient time to check her leave and earnings statements and had a duty to report the discrepancy. Further, the report states that the member should have known that the unposted leave would create a debt. However, this Office

found that at the time the member was separated from the service there was no indication that she was provided with a final separation work sheet or other documentation informing her of how her final pay was computed. Thus, the Settlement Certificate found that with regard to that separation payment, the member reasonably may not have been aware that she was receiving pay in excess of her proper entitlement, and that she acted in good faith in accepting the overpayment. We agree.

However, with regard to the overpayment of active duty pay received on June 30, 1992, this Office found that the member should have questioned her entitlement to receive such pay. When a member knows or reasonably should know that she is receiving pay in excess of her proper entitlement, she has a duty to retain such amounts for subsequent refund to the government and to make prompt inquiry to the appropriate officials concerning her pay. In her appeal, the member states that a civilian employee told her that she would receive a direct deposit payment for the end of the month. But, the employee was not identified and provided no statement, and we have no other evidence of what that employee specifically stated to the service member. This is no basis upon which to predicate reasonable reliance. See Petty Officer Ricky Johnson, USN, B-256417, supra. We also note that the fact that the service member had pay sent directly to a bank did not relieve her of the responsibility of verifying her statements and questioning any discrepancies. DOHA Claims Case 97011403 (April 18, 1997). It is our view that a reasonable person of the service member's experience should have at least questioned payment of active duty pay for a period of time after she had already been separated from the service, especially in view of the period of time she had been in an excess leave status. Thus, we cannot say she is without "fault" in this matter, and waiver of that amount would be inappropriate.

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

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Member, Claims Appeals Board