

DATE: February 3, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 98012301

CLAIMS APPEALS BOARD DECISION

DIGEST

A former Navy member's request for waiver of a debt to the United States under 10 U.S.C. § 2774 is denied. The debt arose when an extra paycheck was deposited in the member's bank account on the next regular payday after he had received his final pay upon separation. Waiver is precluded because the member should have been aware that he was receiving pay and allowances beyond his entitlement.

DECISION

This is in response to an appeal of General Accounting Office Settlement Certificate Z-2925749-056, February 10, 1994, which denied the waiver request of a former member of the United States Navy. The debt arose when the member received a direct deposit to his bank account on the next payday after he had received a final payment upon separation from the service. 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 military member or former member arising out of an erroneous payment of military pay or 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 to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

Background

The member was discharged on February 7, 1992. At that time he received a separation payment in the amount of \$7,796.94, which was a final payment of pay and allowances and all other amounts due him. On February 14, 1992, the next regular payday, the member erroneously received \$516 via direct deposit to his bank account. Due to miscellaneous credits, the amount of the overpayment was later reduced to \$510.30. The Defense Finance and Accounting Service (DFAS) recommended that waiver be denied because the member could not reasonably have expected to receive pay and allowances for the first half of February when he had already received his final pay, which included pay and allowances for February 1-7. In the Settlement Certificate we accepted DFAS's recommendation and denied waiver. The member argues that he did nothing to cause the duplicate payment to be made and in fact tried to prevent it. He states that repayment would cause hardship for him and his family.

Discussion

Under 10 U.S.C. § 2774, we may waive a claim of the United States against a member or former member of the uniformed services for erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted if there exists any indication of fraud, fault, misrepresentation, or lack of good faith by the member or former member. The standard we employ in determining whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement. See Susan J. Carroll, B-252672, Sept. 20, 1993; Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, Jan. 17, 1995. While the duplicate payment occurred due to administrative error, the former member is not without fault because he should have been aware that he received more than his entitlement and should have brought the matter to the attention of the proper authorities. Moreover, the fact that repayment may cause hardship does not provide a basis for waiver. See

Susan J. Carroll, B-252672, supra.

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