

DOHA Claims Case No. 98022612

April 20, 1998

Defense Finance and Accounting Service

Denver Center/FYCC--Attn: Diane Settlemeyer

6760 East Irvington Place

Denver, CO 80279-7000

Dear Ms. Settlemeyer:

This is in response to your request for reconsideration of DOHA Claims Case No. 96103001 (April 21, 1997), which granted a Marine member's claim for retroactive payment of military pay and allowances. The member had been convicted by court-martial and confined, but he became entitled to the retroactive pay and allowances when his conviction was set aside. He had been receiving Social Security Disability Benefits during the period in question, and the Defense Finance and Accounting Service (DFAS) reduced his retroactive pay and allowances by the amount of the Social Security Disability Benefits. In DOHA Claims Case No. 96103001, the Claims Appeals Board found that reduction was not proper. In your reconsideration request, you cite paragraph 030107B.1 of volume 7A of the DoD Financial Management Regulation, 7000.14R (July 1996) (Military Pay Manual).

While there are Comptroller General decisions which deal with salary offset in certain circumstances, there are none which deal with Social Security Disability Benefits. However, Comptroller General decisions state the principle that a member's pay and allowances cannot be reduced by offset in the absence of a statute or regulation which requires it. See Reynaldo Garcia, B-207299, Oct. 6, 1982. DFAS's General Counsel cites that decision in a memo in which he expresses doubt as to whether offset is proper in the present situation.

Paragraph 030107B.1 of the Military Pay Manual, which you cite, states that when retroactive pay and allowances are paid to a member restored to active duty, the member's pay and allowances should be offset by the amount of any civilian earnings or public assistance he receives during the period in question. We note that Social Security benefits are not public assistance. The Social Security system is an insurance program. See 42 U.S.C. § 423. The offset provision in paragraph 030107B.1 is predicated on the principle that a member would not have received public assistance and could not have earned significant civilian compensation while on active duty.⁽¹⁾

As noted in DOHA Claims Case No. 96103001, it is not unusual for a person who is in paid employment to receive Social Security Disability Benefits at the same time. See 42 U.S.C. § 423; and Social Security Ruling 84-24. Moreover, the authority to collect any duplicate payments in such a situation rests with the Commissioner of Social Security rather than DFAS. See 42 U.S.C. § 405. See also 42 U.S.C. § 1382c.

I find no error of fact or law in DOHA Claims Case No. 96103001. If otherwise correct, the member's claim should be paid promptly.

Sincerely yours,

/s/

Leon J. Schachter

Director

Digest

A military member was placed in confinement pursuant to a court-martial conviction. When his conviction was set

aside, he became entitled to retroactive pay and allowances. He had received Social Security Disability Benefits, and the retroactive pay and allowances were offset by the amount of those benefits. Such an offset was not proper in the absence of a statute or regulation requiring it. Paragraph 030107B.1 of volume 7A of the DoD Financial Management Regulation, 7000.14R, does not provide a basis for the offset since it requires offset when a member has received public assistance. The Social Security program is an insurance program rather than public assistance.

1. With regard to the offset of interim civilian earnings, see 48 Comp. Gen. 580 (1969).