

DATE: May 27, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 98051310

CLAIMS APPEALS BOARD DECISION

DIGEST

In order to be considered for waiver, a payment must be erroneous at the time it is made. Payments which are valid when made are not erroneous payments for the purposes of 10 U.S.C. § 2774. Advance payments a member received for two permanent change of station moves were proper when made and, thus, are not subject to waiver.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 98010508, January 20, 1998, which denied waiver under 10 U.S.C. § 2774 of \$1,863.51 of a former service member's debt to the United States resulting from erroneous payments received incident to his military service.

Background

The record indicates that the member was placed in a no-pay status effective April 23, 1988, due to being placed in civil confinement. He was separated from the Air Force on December 20, 1991, and was not entitled to receive any payments at that time. He remained in confinement through January 7, 1997. Prior to his confinement, he received advance payments for two permanent change of station moves. ⁽¹⁾ In September 1996, it was determined by the Air Force that the member owed a \$3,083.51 debt to the United States. Our Settlement Certificate agreed with the Defense Finance and Accounting Service recommendation to waive the \$1,220.00 debt resulting from the erroneous payment of end-of-month pay and casual pay received in April and July 1988, and that the \$1,863.51 debt balance resulting from the advance payments the member received for the moves could not be considered for waiver.

On appeal, the member states his belief that if he had been present during his discharge rather than in incarceration the debt would have been waived. He asks that consideration be given to the period of incarceration he served and provides documentation to emphasize his financial hardship.

Discussion

Under 10 U.S.C. § 2774, we may waive collection of erroneous payments of pay and allowances made to a member or former member if collection would be against equity and good conscience and not in the best interest of the United States. In order to be considered for waiver, a payment must be erroneous at the time it is made. Payments which are valid when made are not erroneous payments for the purposes of 10 U.S.C. § 2774. See DOHA Claims Case No. 97011402 (June 6, 1997). The advance payments were proper when made and, thus, are not subject to waiver. The unliquidated amount of the advance payments that remained at the time of the member's separation remains a debt to the United States. See Steven G. Dodge, B-244977, Mar. 23, 1992. The member's presence as his separation papers were being processed would not have affected the amount of his debt. As has been explained to the member in prior documents, the service properly calculated the debt, considering all entitlements and previous payments. The member remains liable to the United States for the \$1,863.51.

Concerning the fact that the member continues to be charged interest on the debt, we note that under section 102.13 of Title 4, Code of Federal Regulations, agencies have the authority to assess interest and penalties on debts owed the

United States pursuant to 31 U.S.C. § 3717. Additionally, the present or past financial condition of an applicant has no influence or bearing on the outcome of a waiver request. The long-standing rule is that financial hardship is not a sufficient reason to allow an applicant to retain amounts owed to the government. See DOHA Claims Case No. 97041401 (June 26, 1997); and Petty Officer First Class Patrick K. Reedy, USN (Retired), B-257862, Jan. 17, 1995.

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

1. According to the member these moves involved Rhineberg, West Germany, and Fort Clayton, Panama.