

August 21, 1998

In Re:

[Redacted]

Claimant

)

Claims Case No. 98051811

CLAIMS APPEALS BOARD DECISION

DIGEST

Under 10 U.S.C. § 2774, when a member knows or should know that she is receiving questionable payments, she has a duty to hold the payments for eventual repayment. In such circumstances waiver is not proper.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97091517, February 23, 1998, which denied in part the request of an Army member for waiver of a debt which arose due to overpayments of pay and allowances. Of a total debt of \$3,361.90, we waived \$936.69 and denied waiver of \$2,425.21.

Background

The member's term of enlistment expired on August 2, 1992, but she was retained on active duty for court martial. She was sentenced on September 16, 1992.⁽¹⁾ On September 15, a calculation showed that her net entitlement was \$2,312.31, but this amount should have been reduced by \$950.00 which she had received in August. Since the member received \$2,299.00 on September 15, she was overpaid in the amount of \$936.69 at that time. Because the member was in a non-pay status as of September 16, she should not have received any more pay and allowances. The member inquired about her pay on October 9. She states that payroll personnel were unsure of her pay status, but gave her a casual payment of \$481 at that time. Between October 9 and November 25, she received three payments (including the \$481) totaling \$2,425.21. In the Settlement we waived the \$936.69 the member erroneously received on September 15, but denied waiver of the \$2,425.21 she received in October and November. The member indicates that because of her confinement it was difficult for her to make inquiries about her pay. She argues that the balance of her debt should be waived because finance personnel were unsure of her entitlements and caused the overpayments she received.

Discussion

Under 10 U.S.C. § 2774, we may waive a claim of the United States against a 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 and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. If the member knows or should know that she is receiving erroneous payments, she does not acquire title to the amounts received erroneously and has a duty to hold the money for eventual repayment. See DOHA Claims Case No. 98051107 (July 28, 1998). The fact that the erroneous payments occurred because of administrative error does not provide a basis for waiver. See Master Sergeant Haywood A. Helms, USAF, B-190565, Mar. 22, 1978.

In the situation before us, the overpayments occurred due to administrative error. The member was without fault and questioned her entitlements to the extent that she could under the circumstances. However, as she states, there was uncertainty even among finance personnel regarding her entitlements during her confinement. Because she received payments which were at least questionable, she had a duty to hold for refund the money she received after September 15, 1992. It is not against equity and good conscience to require her to repay the amounts she received after that date.

See DOHA Claims Case No. 98051107, 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

1. A memo from the Defense Finance and Accounting Service (DFAS) Indianapolis correctly stated that the member was entitled to pay and allowances only until the end of her period of enlistment on August 2, 1992. However, she did not enter non-pay status immediately because she had accrued leave.