

DATE: September 16, 1998

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In Re:

[Redacted]

Claimant

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Claims Case No. 98072903

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Erroneous overpayments of pay and allowances received after a member becomes aware of the administrative error which accessed him as an O2E rather than an O1E may not be waived. The member does not acquire title to the amounts received erroneously and has a duty to hold the money for eventual repayment. Amounts deposited in his account prior to his becoming aware of the error are waived.

### DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 98060403, June 11, 1998, which denied in part the request of an Air Force member for waiver of a debt which arose due to overpayments of pay and allowances. Of a total debt of \$3,070.54, we waived \$514.41 and denied waiver of \$2,556.13.

### Background

The record indicates that upon graduating from Officer Training School in September 1997, the member was separated as an E5 and was supposed to be accessed as an O1E; however, he was erroneously accessed as an O2E. In October 1997, he returned to his previous duty station for two weeks, then moved to a permanent duty station, and in November 1997 was sent on temporary duty for three months. The member was erroneously paid basic pay and allowances at the O2E rate during the period September 30, 1997, through March 31, 1998. The member's pay was deposited directly into his account, and he did not receive a leave and earnings statement (LES) for October or November 1997 due his moving around. The member learned of the error in the first week of December 1997 when he contacted the financial services office at his temporary duty location to request a copy of his LES. He immediately sought to have the error corrected.

The member requested waiver stating that he made every possible effort to correct the problem from the time he first learned of the error in December. The Settlement Certificate waived the erroneous overpayment for only October 1997.

On appeal, the member asks that we reconsider his waiver application for the erroneous overpayments he received in November and December 1997, arguing that he acted in good faith in receiving these overpayments. He agrees to refund the overpayments received for January through March 1998.

### 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. The standard employed to determine whether a person was at fault in accepting an erroneous payment is whether, under the particular circumstances involved, a reasonable person should have been aware that he was receiving payments to which he was not entitled. See Standard for Waiver, 4 C.F.R. § 91.5(b) (1996); DOHA Claims Case No. 97090810 (October 1, 1997). If the member knows or should know that he is receiving erroneous

payments, he 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 DOHA Claims Case No. 97012103 (June 26, 1997).

Generally, a member has the duty to review and verify the information on his LES in a timely manner. See DOHA Claims Case No. 97032501 (June 9, 1997). In the situation before us, the member did not receive his LES for October and November and was not in a position to know what pay and allowances to expect as a first-time officer. He was not aware of the error when he received his pay for October and November. The member received pay once a month and, for these two months, his pay would have been deposited into his account prior to his receipt of a first LES as an officer. The member was without fault and questioned his entitlements when he first learned of the error. The member knew, however, that the payments he received after the first week of December were erroneous. He had a duty to hold for refund the overpayments he received after he became aware of the error. It is not against equity and good conscience to require him to repay the amounts he received after the first week in December. See DOHA Claims Case No. 98051107, supra. Waiver of the overpayments he received for October and November is granted, but waiver of the overpayments he received for December is denied.

### **Conclusion**

We modify the Settlement Certificate by allowing waiver of an additional \$509.38, the amount of overpayments received for November 1997.

\_\_\_/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

\_\_\_/s/ \_\_\_\_\_

Christine M. Kopocis

Member, Claims Appeals Board

\_\_\_/s/ \_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board