

November 16, 1998

In Re:

[Redacted]

Claimant

)

Claims Case No. 98101314

CLAIMS APPEALS BOARD DECISION

DIGEST

A discharged service member's debt arising from advance pay may not be considered for waiver under 10 U.S.C. § 2774 because the advance pay was not erroneous when paid. Because his entire final separation payment should have been applied to his debt, the amount he received at separation may be considered for waiver. However, waiver of that amount is denied because he should have questioned his entitlement to a final separation payment in light of his debt for advance pay.

DECISION

This is in response to an appeal of DOHA Settlement Certificate, DOHA Claim No. 98021905, March 27, 1998, which denied waiver of a portion of a former military member's debt and determined that the balance of the debt could not be considered for waiver. The debt arose due to advance payments which the member had not repaid when he was discharged from the United States Army.

Background

The former member received advances of pay totaling \$2,598 in July and August 1993. By the time he was discharged on November 19, 1993, his monthly installment payments had reduced the balance of the advances to \$2,335.75. At discharge he was due a final separation payment of \$801.18. That entire amount should have been applied to his debt of \$2,335.75, but only \$30.73 was applied to the debt. The Settlement denied waiver of \$770.45 (\$801.18 minus \$30.73) and indicated that the remaining \$1,534.57 could not be considered for waiver. The former member argues that the debt should be waived because he did not receive a \$5,000 Reenlistment Bonus and other benefits which he expected to receive when he re-entered active duty.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of 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 or former member. To be considered for waiver, payments must be erroneous when made; advance pay therefore cannot generally be considered for waiver because it is not an erroneous payment. *See Steven G. Dodge*, B-244977, Mar. 23, 1992. When a member owes a debt to the government at separation, however, finance personnel should deduct the member's debt from his final separation payment. If finance personnel do not deduct the debt at that time, the amount which should have been deducted becomes an erroneous payment which can be considered for waiver, although waiver cannot be granted unless the statutory requirements listed above are met. *See B-259530*, Feb. 16, 1995.

In the present situation, the former member was indebted to the government for two payments of advance pay which he had received in July and August 1993 and had just begun to repay when he was discharged. As payments of advance pay, those amounts cannot be considered for waiver because they were not erroneous when paid. The \$770.45 which

was paid to the member at separation can be considered for waiver, however, because it should have been applied to the member's debt. The Settlement properly denied waiver of the \$770.45 because the member should at least have questioned his entitlement to the payment when he knew that he was indebted for the balance of the advance pay he had received. He is therefore at fault under 10 U.S.C. § 2774. *See* Standards for Waiver 4 C.F.R. § 91.5(b). *See also Steven G. Dodge, B-244977, supra;* and *B-259530, supra.* While it is unfortunate that the member was misinformed about his entitlement to a Reenlistment Bonus and to the travel and housing entitlements he cites, that misinformation does not provide a basis for waiver.

Conclusion

We affirm the Settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board