

DATE: February 18, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99010416

CLAIMS APPEALS BOARD DECISION

DIGEST

After discharge, a member erroneously continued to receive active duty pay, but did not receive Leave and Earnings Statements or other documents explaining the payments. The member should have questioned his finance officer to verify the nature and amount of the payments. Not having done so, under the 10 U.S.C. § 2774, the member is considered partially at fault; and, therefore, waiver is not appropriate.

DECISION

This is in response to an appeal of our October 6, 1998, Settlement Certificate, DOHA Claim No. 98082408 which sustained the Defense Finance and Accounting Office's (DFAS) denial of a Department of Defense (DoD) employee's application for waiver of a debt of \$1,959.74. [\(1\)](#) The debt arose when the member received erroneous salary payments.

Background

The record indicates that the member was discharged on December 7, 1996. He was entitled to receive a final separation payment in the amount of \$509.53. He erroneously received active duty pay on December 13, in the amount of \$879.88; on December 31, in the amount of \$1,127.19; and on January 15, 1997, in the amount of \$832.55. Our Settlement Certificate waived the \$370.35 difference between his entitlement and the December 13 payment after finding that the member reasonably assumed the payment on December 13 was appropriate as final separation pay.

Prior to discharge, the member was married and served on temporary duty for six months. He left his duty station in October 1996 and was on leave until his discharge in December 1996. He states that the amount of his pay was inconsistent during this time, and he believed he had been underpaid and also was owed travel expenses.

On appeal the member reiterates that he did not receive Leave and Earnings statements for October, November, or December 1996. Because his previous checks were inconsistent and he did not receive any documentation explaining the payments he received after discharge, he believed the payments he received in December and January were owed him. He does not believe he should be penalized for the administrative error made by the government.

Discussion

Under 10 U.S.C. § 2774, this Office may waive claims of the United States against members or former members of the United States only when collection would be against equity and good conscience and not be in the best interest of the United States and there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member or anyone else having an interest in obtaining the waiver. 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* Standards for Waiver, 4 C.F.R. § 91.5(b) (1996); DOHA Claims Case No. 97090810 (October 1,

[\(2\)](#)

1997). An individual who should have known or did in fact know that a payment was erroneous, has a duty to make inquiries or bring the matter to the attention of the appropriate officials. The employee is at fault if he does otherwise. *See* Claims Case No. 97013104 (March 20, 1997). In such circumstances, collection action of the erroneous payment is neither against equity and good conscience nor contrary to the interest of the United States. *See* DOHA Claims Case No. 97011409 (June 6, 1997); *Dennis R. Nix--Reconsideration*, B-249371.2, April 30, 1993.

In this case, the member states that he expected additional payments of travel expenses and pay. The record indicates that he received inconsistent payments during 1996; however, he was receiving approximately \$1,600 per month for the 6 months he was on temporary duty and for November 1996 when he was on leave. Prior to this period he was receiving approximately \$950 per month. He provides no evidence to support his contention that he believed he had been underpaid nor of the approximate amounts he believed were due him for pay or travel expenses. We find that a reasonable person would have questioned his finance officer when he received multiple payments after discharge and no documentation concerning these payments. Even if he expected additional payments, a reasonable person would seek verification that he had been properly and fully compensated. Not having done so, under the waiver statute the member is partially at fault. Under the circumstances, collection of the overpayments is not against equity and good conscience or contrary to the best interest of the United States.

A service member is not entitled to waiver as a matter of right whenever he receives an overpayment as a result of an administrative error. *See* DOHA Claims Case No. 97012103 (June 26, 1997). The member argues that he should not be penalized for DFAS's error. When a member receives payments which he knows or ought to know are in excess of his entitlement, he does not acquire title to the excess amounts and has a duty to return them when asked to do so. *See* DOHA Claims Case No. 98040117 (July 8, 1998). We do not view collection of overpayments in such a situation as a penalty. Moreover, we point out that the member should not receive a windfall due to DFAS's error, as would be the case if he were allowed to retain the overpayments. *See* DOHA Claims Case No 98112018 (January 11, 1999).

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. The Settlement Certificate agreed with DFAS's recommendation to waive an additional \$370.35.
2. This Office decides cases based on the particular facts provided in the written record and applies the legal authorities of statutes, regulations, court decisions, and case law. This case and the other cases cited below state principles which the Comptroller General of the United States before 1997 and this Board after 1996 apply as precedent in rendering decisions of this type.