

This decision was affirmed by the DOD Deputy General Counsel (Fiscal) on January 25, 2001.

April 20, 1999

In Re:

[Redacted]

Claimant

Claims Case No. 99030801

CLAIMS APPEALS BOARD DECISION

DIGEST

When a member receives an amount to which he knows or should know that he is not entitled, he does not acquire title to the money. He has a duty to hold the money for eventual repayment. In that situation, waiver under 10 U.S.C. § 2774 is not appropriate.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals' (DOHA) Settlement Certificate, DOHA Claim No. 99012010, February 23, 1999, which denied the request of a retired military member for waiver of a debt of \$6,468 which arose when a portion of his retired pay which should have been paid to his former spouse under the Former Spouse Protection Act (FSPA) was erroneously deposited into his bank account.

Background

The member's former spouse was entitled to \$462 per month from his retired pay under a court order. According to the member, the Defense Finance and Accounting Service (DFAS) contacted him in ay 1996 and asked for his former spouse's address. He told them how to contact her through her husband, who was on active duty. In August 1997, DFAS deposited \$6,468 in the member's bank account. He immediately questioned his entitlement to the deposit and learned that that amount represented 14 FSPA payments to his former spouse which the Postal Service had returned to DFAS. In

ay 1998, DFAS learned his former spouse's current address and made a one-time payment to her of the amounts retroactively due her. At that time DFAS notified the member that he should return the \$6,468 which had been deposited in his account in 1997. The member objects to DFAS's deposit of the money into his account. Since the debt arose due to administrative error, he does not believe that he should have to repay it.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive a claim for an erroneous payment of pay (including retired pay) or allowances to a member of the Uniformed Services if payment would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member. By itself, the fact that an erroneous payment arose due to administrative error does not entitle a member to waiver if he does not otherwise meet the requirements for waiver set forth in *Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). See *Master Sergeant Haywood A. Helms, USAF*, B-190565, ar. 22, 1978; and DOHA Claims Case No. 99012606 (March 31, 1999).⁽¹⁾ When a member is aware that he has received an amount to which he is not entitled, he does not acquire title to the money, and waiver under 10 U.S.C. § 2774 is not appropriate. See DOHA Claims Case Nos. 98051107 (July 28, 1998), and 98040116 (July 8, 1998).

In the case before us, the member immediately questioned his entitlement to the \$6,468 which was deposited in his bank account. He was informed that it was made up of 14 payments of \$462 per month from his retired pay which DFAS was supposed to send to his former spouse on his behalf under a court order.⁽²⁾ Since he knew that he was not entitled to the money because he was under court order to pay it to his former spouse, he did not acquire title to it and had a duty to hold it for eventual repayment.⁽³⁾ See DOHA Claims Case No. 98051107 (*supra*).

Our authority in this matter extends only to the rendering of a waiver decision. While we agree with the member that the \$6,468 deposit to his account was in error and that DFAS should have held the money for payment to his former spouse, that does not entitle him to waiver.⁽⁴⁾ See *Master Sergeant Haywood A. Helms, USAF*, B-190565, *supra*. We are unable to address the questions which the member asks about DFAS policies and procedures; he should address those questions to DFAS.

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 standards for waiver for civilian employees is the same.
2. Under 10 U.S.C. § 1408, when a retired member is ordered by a court to provide support to his former spouse and the spouse requests the Secretary of the Service concerned to pay the support directly from the member's retired pay, the Secretary is to do so if the court order and the request meet the requirements of the statute and the applicable regulations. The underlying obligation stated in the court order, however, remains with the member; DFAS merely makes payments on his behalf.
3. While the member suggests alternatively in his appeal that perhaps the money came from a source other than the amounts payable to his former spouse, he has provided no evidence to support that suggestion.
4. We note that the member had apparently authorized DFAS to deposit retired pay in his account; therefore, the deposit in question, while erroneous, is not entirely without precedent. The member may have been inconvenienced by the erroneous deposit, but he does not seem to have been harmed by it.