June 24, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99042101

CLAIMS APPEALS BOARD DECISION

DIGEST

1. A former member of the Air Force received two payments of pay and allowances after entering no-pay status while on appellate leave. The payments were deposited in the same bank account to which the Defense Finance and Accounting Service had been depositing his pay and allowances. It is a long-standing principle that a member has a duty to monitor his bank account for deposits in excess of his entitlements and to report overpayments to the appropriate authorities. The fact that the member states that he had relinquished control of the account to his former spouse does not relieve him of that duty.

2. Premiums for the member's Servicemen's Group Life Insurance continued to be paid on his behalf until his discharge. The total amount of the premiums cannot be considered for waiver because the premium payments were not erroneous payments.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 99011109, dated April 19, 1999, which denied in part the waiver request of a former member of the Air Force.

Background

The former member was in a non-pay status awaiting appellate review from August 9, 1993, through May 28, 1996, at which time he was discharged. In August 1993, he should have received a payment of $1,105.47 for eight days of pay and allowances plus four days of leave, but instead received an August mid-month payment of $1,545.90. In the Settlement Certificate the resulting overpayment of $440.43 was waived. Although he was thereafter in a non-pay status and should not have received any further payments, $1,526.60 and $1,541.07 were deposited in his bank account on August 30 and September 15, 1993, respectively.[(1)] Additionally, Servicemen's Group Life Insurance (SGLI) premiums totaling $574 were paid on his behalf from September 1993 through May 1996. On appeal, the debt in issue here therefore amounts to $3,641.67 ($1,526.60 plus $1,541.07 plus $574.00). The former member argues that he was not at fault and that he did not receive the two erroneous deposits in issue. He points out that he suffered tax consequences on account of the debt.

Discussion

Under 10 U.S.C. § 2274, we have the authority to waive a claim for an erroneous payment of pay and allowances to a member or former 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 that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member. The standard we employ to determine fault is that of a reasonable person; if such a person knows or should know that he is receiving money to which he is not entitled, he is at

fault if he fails to bring the excess payment to the attention of the appropriate authorities. In such a situation, waiver is precluded. *See Standards for Waiver*,

4 C.F.R. § 91.5(b) (1996). By itself, the fact that a payment arose due to administrative error does not entitle a member or former member to waiver if he does not otherwise meet the standards set forth in 4 C.F.R. § 91.5(b), *supra*. *See* DOHA Claims Case No. 99012606 (March 31, 1999).[(2)] Moreover, according to the language of the waiver statute, a payment cannot be considered for waiver unless it was erroneous.

The Settlement Certificate correctly indicated that the $574 in SGLI premiums which the Defense Finance and Accounting Service (DFAS) paid on the former member's behalf do not constitute an erroneous payment. He was entitled to continued SGLI coverage until his discharge, although he owed DFAS for the premiums since he was in a non-pay status. If he had died between September 1993 and May 1996, his beneficiary would have received SGLI proceeds minus the premiums. Since the $574 was not an erroneous payment, that amount cannot be considered for waiver.

We agree with the former member that his debt arose due to administrative error. However, that alone does not entitle him to waiver. *See* DOHA Claims Case No. 99012606, *supra*. With regard to overpayments of compensation in a wide variety of situations, the Comptroller General consistently held that a member or an employee has a duty to verify the accuracy of his leave and earnings statements and to monitor his bank account so as to be aware of direct deposits to the account, and he is at fault if he fails to do so.[(3)] We agree with the Comptroller General's decisions on that issue. *See Susan J. Carroll,* B-252672, Sept. 20, 1993. The member indicates that he did not receive leave and earnings statements for the period in question, but it is not clear when he stopped receiving them. If he did not receive them for the months preceding August 1993, he should have contacted DFAS to correct the situation. However, even if he was not receiving leave and earnings statements, he had a duty to monitor DFAS's deposits to his bank account. DFAS had been making direct deposits to the former member's bank account, which was apparently a joint account, with his authorization. The fact that he relinquished his control over the account did not relieve him of his responsibility for erroneous payments deposited into the account. A former member should question his entitlement to further compensation if deposits are made to his bank account after he receives what should be his final payment. Therefore, waiver of any subsequent payments is not appropriate. *See* DOHA Claims Case No. 98020428 (Mar. 12, 1998);[(4)] and *Petty Officer First Class Patrick K. Reedy, USN (Retired),* B-257862, Jan. 17, 1995. We view the situation before us as similar to those cases. The fact that in this case the former member had relinquished his control over the bank account to which DFAS had been making deposits does not relieve him of his responsibility to monitor the account for erroneous payments and ultimately to return those payments when asked to do so. Waiver cannot be granted in this situation.

The former member questions DFAS's reporting of his income to the Internal Revenue Service (IRS). The Comptroller General consistently maintained that an individual's federal tax situation is a matter for the individual to settle with the IRS, and we agree with that principle. *See* DOHA Claims Case No. 99012606 *supra*; *Fort Polk Employees,* B-261699, Oct. 25, 1996. The tax laws are administered by the IRS, and we have no jurisdiction in that area of law. Furthermore, that area of the law is very complex. We have no knowledge of the former member's tax situation.[(5)] If the former member wishes to question DFAS's reporting of his income to the IRS, he should contact DFAS directly with his question.

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 record indicates that another $1,541.07 was deposited on September 30, but the Air Force withdrew that amount, which therefore is not part of the debt.

2. For civilian employees the waiver statute is 5 U.S.C. § 5584.

3. This legal definition of "fault" in waiver decisions does not imply any ethical lapse on the part of the employee or member. It merely indicates that he is not entirely without responsibility for any resulting overpayment and that therefore the equitable remedy of waiver is not available to him.

4. The waiver statute for National Guard members is 32 U.S.C. § 716.

5. According to the former member, DFAS issued a W-2 form in 1996 for payments made in 1993. The record contains no information on this matter, and it is not relevant to our waiver consideration. We note that the $3,067.67 under consideration for waiver is the net, rather than the gross, amount which the former member received after separation.