

July 26, 1999

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In Re:

[Redacted]

Claimant

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Claims Case No. 99060218

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A service member was paid Basic Allowance for Housing for 11 months while she occupied government quarters. She received Leave and Earnings Statements (LESs) which indicated the error. She did not review the LESs to verify their accuracy and call the error to the attention of the proper authorities. Therefore, she is partially at fault for the accrual of the debt, and waiver is precluded.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 99040510, dated April 9, 1999, which denied the request of a former member of the Naval Reserve for waiver of a debt which arose when she received Basic Allowance for Housing (BAH) while living in family-type government quarters.

### Background

In December 1997 the former member was transferred from Naval Air Reserve Point Mugu, California, to Naval Air Facility, Washington, where she occupied family-type government quarters. Although members in such quarters are not entitled to BAH,<sup>(1)</sup> she received BAH from January 1998 through November 1998. This administrative error resulted in a debt of \$4,613.40.<sup>(2)</sup> The former member states that she followed the proper procedures and filled out the paperwork necessary to halt her BAH and does not feel that she should be penalized for the mistakes of a personnel or finance office. She states that she looked over her Leave and Earnings Statements (LESs) in at least a cursory manner when she began receiving them at her new duty station in March 1998, but did not notice that she was receiving BAH, although the payment of BAH was clearly listed. She points out that she is already in a difficult financial situation and that repayment would result in severe hardship.

### Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection repayment of erroneous payments of pay and allowance of members or former members of the Uniformed Services if collection would be against equity and good conscience and not in the best interest of the United States, provided that there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard we employ to determine whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was being overpaid. *See Petty Officer Ricky Johnson, USN, B-256417, July 22, 1994*. Moreover, since a member has a responsibility to verify the accuracy of her LESs, she is considered to be at fault with regard to an overpayment if information which would have alerted the member to the overpayment is provided and she does not call the error to the attention of the appropriate authorities. *See DOHA Claims Case No. 98120401 (March 4, 1999)*. The fact that administrative error caused erroneous payments does not by itself entitle the recipient to waiver of the resulting debt if

the standards for waiver are not met. *See* DOHA Claims Case No. 98112018 (January 11, 1999).

In the case before us, the debt arose due to administrative error, but that alone does not entitle the former member to waiver. *See* DOHA Claims Case No. 98112018, *supra*. The former member occupied government quarters after a permanent change of station move. She should have expected the amount of her pay to reflect that fact. While her first two LESs at her new duty station may have been delayed, she should have been aware of the amounts being deposited in her bank account. Since BAH was \$419.40 for a person of her grade, she should have been aware that those deposits were excessive while she lived in government quarters. As soon as she received an LES, she should have checked it carefully. The LESs in the record clearly indicate that she was receiving BAH. She should have noted the error and brought it to the attention of the proper authorities. Since she did not do so, she is at least partly at fault for the fact that the erroneous payments continued for 11 months. In such a situation waiver is not appropriate. *See* DOHA Claims Case No. 98120401, *supra*. While the member states that she expected an increase in her pay due to Earned Income Credit (EIC), the amount of the EIC was clearly indicated on her LESs, and it amounted to much less than \$419.40.<sup>(3)</sup>

Hardship does not provide a basis for waiver if the standards for waiver have not been met. *See* DOHA Claims Case No. 98012301 (Feb. 3, 1998) and *Susan J. Carroll*, B-252672, Sept. 20, 1993. However, although waiver cannot be granted in this case, we note that Federal Claims Collection Standards allow for relief from full collection in appropriate circumstances. *See* 4 C.F.R. § 104 (1996). This Office would not object to suspension or termination of collection activity against the former member in this instance if deemed appropriate by the proper authorities.

The former member questions the effect that the overpayment and repayment will have on her tax liability. That is beyond the scope of our decision, and she should contact the Internal Revenue Service for answers to her questions. However, we note that BAH is not subject to federal income tax; therefore, the overpayment should not have affected her tax liability.

### Conclusion

We affirm the Settlement.

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Michael D. Hipple

Chairman, Claims Appeals Board

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

Christine M. Kopocis

Member, Claims Appeals Board

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

Jean E. Smallin

Member, Claims Appeals Board

1. Effective January 1, 1998, BAH replaced Basic Allowance for Quarters and Variable Housing Allowance. *See* 37 U.S.C. § 403.

2. At separation the member was due \$1,529.66 for unused leave and other entitlements. That amount was applied to her debt, leaving a balance of \$3,083.74.

3. Her EIC amounted to \$94.95 in January 1998 and after that to less than \$35 per month.