

KEYWORDS: waiver of indebtedness

DIGEST: A member has a duty to verify information on his Leave and Earnings Statements and bring any errors to the prompt attention of the proper authorities. When a member fails to do so and an error that could have been identified results in overpayment, waiver is not appropriate under 32 U.S.C. § 716.

CASENO: 2009-WV-030404.2

DATE: 10/01/2009

DATE: October 1, 2009

In Re:)
) [REDACTED]) Claims Case No. 2009-WV-030404.2
))
))
))
) Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member has a duty to verify information on his Leave and Earnings Statements and bring any errors to the prompt attention of the proper authorities. When a member fails to do so and an error that could have been identified results in overpayment, waiver is not appropriate under 32 U.S.C. § 716.

DECISION

A member of the Army National Guard requests reconsideration of the August 28, 2009, appeal decision by the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09030404, in which our office waived \$2,618.80 but denied waiver of \$55,677.69. The member asks us to reconsider waiver relief for the additional \$55,677.69.

Background

The record shows that orders issued March 25, 1991, ordered the member to active duty full-time in the National Guard. At that time the member's pay entry base date (PEBD) was established as January 22, 1987. However, due to an administrative error, the member's PEBD was erroneously entered in the payroll system as March 11, 1978. As a result his years of service were erroneously changed from over four years to over twelve years of service. Due to this administrative error, the member's basic pay was miscalculated from March 26, 1991, through July 31, 2006, causing an overpayment of \$69,296.49. However, when the error was discovered, another error was discovered which indicated that the member had been underpaid basic allowance for housing in the amount of \$11,000, from October 1, 2000, through August 4, 2006, which reduced the debt to \$58,296.49. This was the amount the adjudicator considered for waiver. The adjudicator determined that from March 26, 1991, through February 28, 1992, the format of the Leave and Earning Statement (LES) was such that the PEBD was obscurely listed under Finance Office Information. Therefore, there was no evidence to substantiate that the member would have been aware his years of service were incorrect, and all conditions necessary for waiver this portion of the claim were met. This resulted in the appeal decision waiving \$2,618.80. The denial of the remainder of the debt resulted from the adjudicator's determination that after March 1992, the member would have been partially at fault for not noticing the error, as after that time the PEBD was clearly listed on the LES as "pay-date: xxxxx". The member contends that the error was not his; he was never trained that it was a requirement to review his LES; and he is being held to a higher standard than the people who are trained in finance and are responsible for this error. The member contends that in March 1992, when the format of the LES changed, nothing changed that would make him notice the error, as his pay didn't change, and he never received any training in reviewing the new LES format. He states that the only documents he was required to review were his Annual Personnel Reviews and Personnel Qualifications Records, which he initialed and returned to finance. Those documents had his correct PEBD on them. The only place that had an incorrect PEBD was on his LES, and that was not a document he was required to review. He contends that his actions were in good faith as the record shows he was also underpaid \$11,000 at the same time. The member believes that collection of this money would be against equity and good conscience.

Discussion

Section 716 of title 32, United States Code, provides authority for waiving claims for erroneous payments of pay and allowances made to or on behalf of certain members or former members of the National Guard, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. Whether to grant waiver under 32 U.S.C. § 716, as the statutory language indicates, is not decided as a matter of right whenever a member innocently receives pay to which he is not entitled, but is to be decided on the principles of equity and fairness presented in each case. The member stated that he did not review his LES, and never had cause to since he was "under the assumption that other people more qualified than I

were monitoring my pay.” The member stated he had no idea “he wasn’t receiving the proper amount because I didn’t review my LES.” The Investigating Officer who looked into the overpayment noted in his report, “When I asked [the member] ‘how could you get over paid for 15 yrs and not notice it on your LES’, he replied, ‘my wife handles the bills, I never see my LES’.” The LES is issued to members so that they can verify the accuracy of their pay. We cannot stress enough the importance of a careful review by each member of the LES provided by the agency. We have consistently held that members have a duty to carefully examine their LES and report any errors. If the member fails to fulfil this obligation, we have held that the member is at fault and waiver is precluded. *See* DOHA Claims Case No. 97032501 (June 9, 1997); DOHA Claims Case No. 06111301 (November 15, 2006); and DOHA Claims Case No. 07031906 (March 27, 2007).

Conclusion

The member’s request for reconsideration is denied, and we affirm the August 28, 2009, appeal decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member’s waiver request under 32 U.S.C. § 716.

///Original Signature///

Michael D. Hipple
Chairman, Claims Appeals Board

///Original Signature///

Jean E. Smallin
Member, Claims Appeals Board

///Original Signature///

Natalie Lewis Bley
Member, Claims Appeals Board

