

KEYWORDS: waiver of indebtedness

DIGEST: Due to an administrative error a former member's travel for expiration of term of service (ETS) was processed overpaying him temporary lodging allowance (TLA) for himself and his dependent child. This was an error since he was married to an active duty service member who also traveled for ETS and claimed the same dependent child for TLA purposes.

CASENO: 2009-WV-011605.3

DATE: 7/28/2010

DATE: July 28, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2009-WV-011605.3
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error a former member's travel for expiration of term of service (ETS) was processed overpaying him temporary lodging allowance (TLA) for himself and his dependent child. This was an error since he was married to an active duty service member who also traveled for ETS and claimed the same dependent child for TLA purposes.

DECISION

A former member of the United States Air Force requests reconsideration of the July 8, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 09011605.2. In that decision DOHA denied waiver of \$575.37.

Background

The record shows the former member and his active duty spouse performed expiration of term of service (ETS) travel from an Air Force Base in Alaska to Kentucky. They both claimed

temporary lodging allowance (TLA) for themselves and their dependent child. In his request for waiver, the member argued that he went to the finance office and requested the assistance of staff on the proper way to complete the advance travel form. The member suggested that because the error was due to the solicited guidance of the travel staff, waiver should be granted. The adjudicator determined that while an administrative error did occur, this Office has consistently held that the waiver statute does not apply automatically to relieve the debts of members who, through no fault of their own, have received erroneous payments from the government. The adjudicator noted that the member did not provide any statements from anyone from the finance office indicating the advice they provided the member. Also, there is no evidence that the TLA was used for its intended purpose.

This Office received from the member his paperwork that had been returned from the Air Force Board for Correction of Air Force Records for exhaustion of remedies. The member initially submitted the paperwork to the Air Force Board of Corrections March 28, 2007. The decision from our office was dated July 8, 2010. The date of March 28, 2007, had been crossed through on the DD Form 149, *Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552*, and a new date, July 16, 2010, was written over it. This Office accepts this as the member's request for reconsideration, having explained to the member his rights to reconsideration in the prior decision. The member offers no new grounds for waiver under 10 U.S.C. § 2774.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances to a member or former member if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member.

As a general rule, the government is neither bound nor estopped by the erroneous advice or unauthorized acts of its officers, agents or employees even though committed in the performance of their official duties. In this case the member has offered no new evidence to indicate that the decision of the adjudicator was arbitrary, capricious, or an abuse of discretion. See DOHA Claims Case No. 03061247 (June 17, 2003); DOHA Claims Case No. 03050907 (May 15, 2003); and DOHA Claims Case No. 00100331 (January 29, 2001). Therefore, we will not disturb the adjudicator's determination.

Conclusion

For the reasons stated in this decision, we affirm the July 8, 2010, decision denying waiver in the amount of \$575.37. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Acting Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

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Natalie Lewis Bley
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