

KEYWORDS: waiver of indebtedness

DIGEST: A member who was deployed overseas received basic allowance for housing (BAH) at the single rate for the period January 24, 2007, through February 20, 2008. During the in-processing for his deployment, the member was advised by his finance office that he was entitled to receive BAH at the single rate. It was later determined that he was not entitled to receive BAH at the single rate and that he was overpaid in the amount of \$12,576.59. The member was notified in writing by his finance office of the debt on or about December 5, 2007. Waiver was granted for the overpayments he received through August 15, 2007, but denied for the overpayments he received after that date through February 20, 2008, in the amount of \$5,656.58. Waiver is granted for an additional \$3,516.80 since the record supports the position that the member was unaware he was being overpaid through November 30, 2007.

CASENO: 2009-WV-020401.2

DATE: 12/09/2009

DATE: December 8, 2009

)	
In Re:)	
[REDACTED])	Claims Case No. 2009-WV-020401.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member who was deployed overseas received basic allowance for housing (BAH) at the single rate for the period January 24, 2007, through February 20, 2008. During the in-processing for his deployment, the member was advised by his finance office that he was entitled to receive BAH at the single rate. It was later determined that he was not entitled to receive BAH at the single rate and that he was overpaid in the amount of \$12,576.59. The member was notified in writing by his finance office of the debt on or about December 5, 2007. Waiver was

granted for the overpayments he received through August 15, 2007, but denied for the overpayments he received after that date through February 20, 2008, in the amount of \$5,656.58. Waiver is granted for an additional \$3,516.80 since the record supports the position that the member was unaware he was being overpaid through November 30, 2007.

DECISION

A member of the Army requests reconsideration of the October 23, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09020401. In that decision, DOHA waived in part the collection of a debt owed by the member. The member seeks waiver of the remainder of the debt.

Background

The member was deployed overseas in January 2007. The record reflects that the member began receiving basic allowance for housing (BAH) at the single rate. The Army later determined that he was not entitled to receive BAH at the single rate during his period of deployment since he was residing in government-provided housing facilities. Due to this administrative error, the member was overpaid in the amount of \$12,576.59 during the period January 24, 2007, through February 20, 2008.

In DOHA Claim No. 09020401, the adjudicator waived \$6,920.01, the portion of the erroneous payments of BAH the member received during the period January 24, 2007, through August 15, 2007. The adjudicator denied the remaining \$5,656.58, because the member accessed his leave and earnings statements (LES) when he requested leave in August 2007. She found that if the member had reviewed his LES in August 2007, he would have noticed that his BAH was miscalculated.

In his request for reconsideration, the member attaches a memorandum from his finance office overseas endorsing his waiver request. The memorandum states that the member was advised he was entitled to receive BAH at the single rate when he in-processed at the finance office. The memorandum states that the member would not have reasonably been expected to know he was not entitled to BAH since all single members providing lease or mortgage documentation received BAH as did all members with dependents for the location of their household stateside. The memorandum also reflects that the member was notified of the debt in writing by his finance office on or about December 5, 2007.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation or lack of good faith on the part of the member. A waiver usually is not appropriate when a member knows, or reasonably should know, that a payment is erroneous. The member has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.4.

In this case, the member was advised by his finance office overseas during in-processing that he was entitled to receive BAH at the single rate. He was notified in writing by the finance office overseas that he was not entitled to receive BAH at the single rate on or about December 5, 2007. These facts support the position that the member reasonably believed he was entitled to

receive BAH at the single rate during the period August 16, 2007, through November 30, 2007, in the amount of \$3,516.80. *See* DOHA Claims Case No. 09080501 (August 17, 2009).¹

Conclusion

The member's debt is waived in the additional amount of \$3,516.80. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

¹This case was decided under 5 U.S.C. § 5584, because the claimant was a civilian employee. However, the standards for waiver are the same for service members and civilian employees.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board