

KEYWORDS: waiver of indebtedness

DIGEST: Under 32 U.S.C. § 716, a member's debt may be waived when the record shows that he is without fault, and there is no indication of fraud, misrepresentation, or lack of good faith on his part.

CASENO: 2009-WV-050510.2

DATE: 4/01/2010

April 1, 2010

In Re:)	
[Redacted])	Claims Case No.2009-WV-050510.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 32 U.S.C. § 716, a member's debt may be waived when the record shows that he is without fault, and there is no indication of fraud, misrepresentation, or lack of good faith on his part.

DECISION

A member of the Air National Guard requests reconsideration of the March 10, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09050510. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the member's indebtedness.

Background

The member's debt arose when two payments of travel pay intended for another member were erroneously routed into the member's bank account. One payment in the amount of \$698.33 was deposited into the member's account on June 28, 2007. The member received the second payment, in the amount of \$424.14 on September 27, 2007. The amount of the member's waiver request is therefore \$1,122.47. The member discovered the routing error and called it to the attention of the proper authorities when a third payment, in the amount of \$1,194.25, was deposited into the member's account in January 2008. DOHA's adjudicator affirmed DFAS's determination that the member should have known that the first two payments were erroneous and should have called them to the attention of finance authorities. In his request for reconsideration, the member pointed out that he received numerous payments in varying amounts during the period in question. He also stated that the payments came on random dates during each month and were not always in the order in which he earned them. The member indicated that he did not receive an explanation of what each payment was for. He also noted that he was expecting to receive travel pay at the time, so that even if he was informed that the payments were for travel, he would not have been aware that the payments were not his.

Discussion

Under 32 U.S.C. § 716, we have the authority to waive collection of erroneous payments of pay and allowances if collection 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver is usually not appropriate when a member knows, or reasonably should know, that a payment is erroneous. In such a case, the member has a duty to notify the proper authorities and set aside the funds for repayment.

In the case before us, the record indicates that the member received multiple payments each month in varying amounts and without explanations for the amounts. It is significant that the two payments involved travel, where reimbursement was not in exact amounts that could be reasonably known. The member has provided sufficient proof that he was not aware that he was not entitled to the first two erroneous payments. The record contains a memo from the member's unit comptroller explaining how the debt arose and recommending waiver. Moreover, when the member recognized that the third payment (the largest one), was erroneous, he contacted the appropriate officials and returned it. *Cf.* Comptroller General decision B-252057, Mar. 18, 1993.¹

¹While B-252057 involves a different allowance, the case is analogous, since the member in that case notified finance officials of a suspected error on numerous occasions. Moreover, numerous additions and subtractions to her pay made the determination of her entitlements difficult. The standards for waiver under 10 U.S.C. § 2774 and 32 U.S.C. § 716 are the same.

Conclusion

Accordingly, we overrule the DOHA appeal decision of March 9, 2010. Repayment of the member's debt of \$1,122.47 is waived. In accordance with DoD Instruction 1340.23, ¶ E8.15, 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

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board