



DEFENSE FINANCE AND ACCOUNTING SERVICE

8899 east 56th street
Indianapolis, in 46249-0201

Name
Address

Dear Name:

This is in reference to your waiver request, file number MSXXXXXXX. You requested a waiver in the amount of \$XXX,XXX. Your actual debt is \$XXX,XXX.XX and this amount will be considered for waiver. Your indebtedness resulted from concurrent payments of retired pay and Department of Veterans Affairs (VA) disability payments from December 19, 2013 through May 31, 2016. We have verified the amount of the debt computation and it is equal to the amount being considered for waiver. For the reasons stated below, your waiver is denied in the amount of \$XXX,XXX.XX.

Certain members of the uniformed services may be eligible for the waiver of collection of erroneous payments of pay and allowances under the authority at 10 U.S.C. 2774. For waiver approval, collection must be determined to be against equity and good conscience and not in the best interest of the United States. Department of Defense Instruction (DoDI) 1340.23 sets out the standards for waiver determinations. Generally, a person who receives an erroneous payment from the Government acquires no right to the money. The recipient of the payment is bound in equity and good conscience to make restitution. If the payment has been made by mistake, the recipient must make restitution unless a waiver of repayment is approved. A waiver is not a matter of right but is available to provide relief as a matter of equity if the circumstances warrant a waiver.

The standards for determining the appropriateness of a waiver further provide that waiver is inappropriate if the erroneous payment is the result of fraud, misrepresentation, fault, or lack of good faith on the part of the waiver applicant. Waiver is also inappropriate when a recipient knows or reasonably should have known that a payment was erroneous. If the member is furnished with information that would cause a reasonably prudent person to be aware of or suspect the existence of an error but the member fails to take sufficient corrective action, the member is not without fault and waiver should be denied. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the Government is not a sufficient basis in and of itself for granting a waiver. The recipient of the payment has a duty to notify an appropriate official and to set aside the funds for eventual repayment. Financial hardship is not a factor for consideration when determining whether a waiver is appropriate.

You stated you were unaware of the indebtedness until around September 1, 2016 when you received a debt letter from Defense Finance and Accounting Service (DFAS). You further stated that the VA Medical Center doctors and counselors told you that you were entitled to both DFAS pension and VA disability pay.

www.dfas.mil

On July 12, 2008, you signed a VA Form 21-526 (Veteran's Application for Compensation and/or Pension) and submitted the form to the VA. On Part V, you inaccurately answered block 23b that you will not receive retired pay in the future. The inaccurately checked block 23b was checked "NO" even though you were pending placement to the Permanent Disability Retired List and currently on the Temporary Disabled Retired List. Part V of VA Form 21-526 has a notice: "IMPORTANT- Unless you check box in item 25 below, you are telling us that you are choosing to receive VA compensation, we will reduce your retired pay by that amount of any compensation that you are awarded" You did not check block 25.

On the VA compensation award letter dated January 13, 2012, the last page indicates that they enclosed a VA FORM 21-8764 (Disability Compensation Award Attachment Important Information). The VA Form 21-8764, section "What Conditions Affect Right to Payments?" it states in 2b. your payments may be affected by "receipt of armed forces service retirement pay, unless your retirement pay has been reduced because of award of disability compensation" and you must promptly call this to our attention.

Since you did not check "No" in block 25 on the VA Form 21-526, you gave no notice to the VA to communicate to Retired Pay Office to proceed with a VA waiver preventing your debt when you were approved for retired pay and VA pay. You were notified that you need to communicate to the VA when in receipt of retirement pay due to the enclosed the VA Form 21-8764 of your VA award letter. Because you should have been aware of or questioned the erroneous payments, you are not without fault in the matter, which statutorily precludes favorable waiver consideration.

Fault, in this context, does not indicate an ethical lapse, or that an overt act by the member caused the debt to occur. It merely indicates that the member is not without fault in the accrual of the debt or that he should have been aware of the overpayment. The standard used to determine fault is whether a reasonable person, in similar circumstances, should have known that he was receiving payments in excess of his entitlements.

Prior Claims Appeal Board decisions are used in establishing precedence in making a waiver determination. Although these prior decisions may not reflect your exact situation, they do have similar circumstances or events found in your case that reinforce the reason your waiver was not favorably considered. Refer to Claims Appeals Board Decision(s), Claims Case No. 2011-WV-030806.2.

You may request that the Defense Office of Hearings and Appeals (DOHA) reconsider our decision. Reconsideration requests must be made in writing, and as noted in DoDI 1340.23, paragraph E8.2, our office must receive the request within 30 days of the date of this letter. We may extend this period for up to an additional 30 days for good cause shown if the written request for an extension of time is received within the original 30 days. A request for reconsideration must be sent to our office at the following address: DFAS-IN, 8899 East 56th Street, Department 3300 (Waivers/Remissions), Indianapolis, IN 46249-3300, or emailed to dfas.indianapolis-in.jfe.mbx.remission-waiver-indy@mail.mil, or faxed to DSN 699-8654, Commercial (317) 212-8654. No request for reconsideration may be accepted after this time has expired.

Your signed request must conform to DoDI 1340.23, paragraph E8.3, and contain your name, file number, and current address. Please note that in the event of an address change, please provide our office with an updated address. The request must also identify the specific errors or omission of facts in the original waiver decision and explain the reasons why the decision should be reversed or modified. Any additional evidence not included in the original waiver but addressed in the appeal must be provided. The complete DoDI 1340.23 may be found online at <http://www.dtic.mil/whs/directives/corres/pdf/134023p.pdf>. You should be aware that collection of your debt may not be suspended while the DOHA is considering your request.

Our point of contact is the undersigned, at (866) 912-6488 or email dfas.indianapolis-in.jfe.mbx.remission-waiver-indy@mail.mil.

Sincerely,

Signature Authority
Director, DFAS Indianapolis

cc:
US Retired Military Pay Office

Enclosure:
As stated