



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 and file number MSXXXXXXX. You applied for waiver consideration of a \$X,XXX.XX, indebtedness established on your pay account due to overpayment upon your official Discharge from Active Duty on October 6, 2016. You were administratively separated from the United States Army on May 6, 2015, and placed into a no-pay due status due to being placed into civilian confinement on May 7, 2015. You continued to receive payment of Basic Pay and allowances through June 15, 2015, while in a no-pay due status. After careful consideration waiver is denied in the amount of \$X,XXX.XX, and approved in the amount of \$X,XXX.XX.

For the period May 1-6, 2015 you were due payment of Basic Pay in the amount of \$X,XXX.XX, Basic Allowance for Subsistence in the amount of \$XX.XX, and Basic Allowance for Housing in the amount of \$XXX.XX, and Fly Pay in the amount of \$XX.XX. The total amount due you for this period was \$X,XXX.XX. After deductions for Social Security Tax (FICA) in the amount of \$XX.XX, Medicare in the amount of \$XX.XX, Servicemembers' Group Life Insurance (SGLI) in the amount of \$XX.XX, and Family SGLI in the amount of \$XX.XX, you were due payment in the amount of \$X,XXX.XX. You were paid a mid-month payment in the amount of \$X,XXX.XX on May 15, 2015, and a debt was established on your military pay account in the amount of \$X,XXX.XX. You received an end-of-month payment in the amount of \$X,XXX.XX on May 31, 2015, and a mid-month payment in the \$X,XXX.XX on June 15, 2015. These payments increased your indebtedness to \$X,XXX.XX. We have verified the amounts on the debt computation equal the amount being requested for waiver.

Certain members of the uniformed services may be eligible for waiver of collection of erroneous payments of pay and allowances under the authority of 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) set out the standards for waiver determinations. Generally, persons who receive a payment from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If the payment was made by mistake, no matter how careless the act of the Government may have been, 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 not appropriate 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 not appropriate 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 employee 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, even if the Government fails to act after such notification. Financial hardship is not a factor for consideration when determining whether a waiver is appropriate.

You state you received a notice in prison on January 9, 2017. Your family had informed your command that you had been sentenced to six years in prison. The overpayments are not your fault as you did everything possible to inform your unit of your prison term. You had 7 days leave at the time of separation and can use that to offset your debt. You are no longer in the Army.

Based on your character of service as listed on your Certificate of Release or Discharge from Active Duty (DD Form 214) you are not authorized payment of accrued leave. Accrued leave is not payable if the discharge is under other than honorable conditions in accordance with Title 37 U.S.C. Section 501(e) (1). You would have known the date you were placed into civilian confinement; however, you realistically would not have been aware of exactly how much you were actually due. The payment paid to you on May 15, 2015, in the amount of \$X,XXX.XX, should have only included payment for Basic Pay and allowances for the period 1-6 May 2016. Due to a late reporting of your confinement by your unit to finance, you were paid through May 15, 2015. Based upon this review your waiver is approved in the amount of \$X,XXX.XX.

You would have known that you were no longer due any further payments of Basic Pay and allowances beyond the payment issued to you on May 16, 2015. You received two further payments totaling \$X,XXX.XX. You do not state that you contacted anyone about issuance of these payments to you. Waiver is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous, the recipient 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. For these reasons your request for waiver is denied in the amount of \$X,XXX.XX.

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.bean.jfe.mbx.remission-waiver-indy@DFAS.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. It 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 on-line 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 e-mail dfas.indianapolis-in.jfe.mbx.remission-waiver-indy@mail.mil.

Sincerely,

Signature Authority
Chief, Remission and Waivers Branch
Debt and Claims Management