

DATE: August 30, 2019

In Re:)

[REDACTED])

) Claims Case No. 2019-WV-021901.2

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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of a debt under 5 U.S.C. § 5584 is not appropriate when an employee is aware or should be aware that she is receiving salary to which she is not entitled.

DECISION

An employee of the U.S. Army requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-021901, dated July 22, 2019.

Background

A Notification of Personnel Action (SF 50), issued and effective January 10, 2016, granted the employee a salary adjustment from \$73,337.18 per annum to \$91,621.00 per annum, when the correct salary per annum was \$87,716.61. As a result, the employee was overpaid \$1,098.40 during the period January 10, 2016, through March 5, 2016. On March 14, 2016, an SF 50 was issued to correct the employee's salary to \$87,716.61 per annum, effective January 10, 2016. The \$1,098.40 debt was established against the employee, and was reflected on her leave and earnings statement (LES) for the pay period ending (PPE) March 19, 2016. The employee subsequently received the proper salary during the period March 6, 2016, through September 3, 2016.

On April 21, 2016, the employee appealed the decision to set her salary at \$87,716.61. On August 3, 2016, the employee's command denied her appeal.

On September 13, 2016, an SF 50 was issued erroneously changing the employee's salary from \$87,716.61, back to \$91,621.00, retroactive to January 10, 2016. As a result, during the PPE September 17, 2016, the employee was overpaid \$149.60, and erroneously issued a retroactive salary payment in the amount of \$2,543.20 for the period January 10, 2016, through September 3, 2016. In addition, erroneous salary payments were made to the employee during the period September 18, 2016, through November 13, 2016, resulting in an overpayment in the amount of \$598.40. Therefore, the employee was overpaid in total \$4,389.60 (\$1,098.40 + \$149.60 + \$2,543.20 + \$598.40).

The DOHA adjudicator affirmed the Defense Finance and Accounting Service's (DFAS's) recommendation to waive \$1,098.40, which represented the erroneous salary payments the employee received before notification of the error, and deny waiver of the remaining \$3,291.20, the erroneous salary payments she received after notification of the error.

In the employee's request for reconsideration, she seeks waiver of the remaining \$3,291.20 in erroneous salary payments she received during the PPE September 17, 2016, through November 13, 2016. She states that she was not aware that she was receiving erroneous payments during this time. She states that when she noticed changes to her salary in the PPE September 17, 2016, she believed it was because her salary had finally been corrected. She then informed the Inspector General and her union president on October 5, 2016, of the change in her salary. She states that she was not officially notified that she was overpaid until November 15, 2016. She states that even after she was notified, her Civilian Personnel Office was working to recalculate her salary. She states that she was finally notified that her salary would not be recalculated on December 9, 2016. She states that there were multiple errors in establishing her salary that were no fault of her own.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the Government's claim for repayment of erroneous payments of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) (February 14, 2006). Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee 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* Instruction ¶ E4.1.4. In addition, a waiver generally is not appropriate when an employee who receives a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The employee has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5. A waiver may be inappropriate in cases where an employee questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the employee knew or reasonably should have known that the advice was erroneous. *See* Instruction ¶ E4.1.6.

In the case, the employee states that she working with her union on an ongoing challenge concerning her position and salary before her Civilian Personnel Office. However, given the finality of her command's decision in August 2006 and lack of any supporting documentation for this change in September 2016, the employee should have immediately questioned the unexplained payments, especially since she had not received any documentation overturning the command's decision. Under these facts, the employee should have held the payments until she received a definite determination of her entitlement to them. Although the employee states that she was not officially notified she was overpaid until November 15, 2016, she still was on notice as of August 2016 that she was not entitled to receive the salary of \$91,621.00 per annum. Therefore, the adjudicator reasonably concluded that it would not be against equity and good conscience to recover the erroneous payments the employee received during the PPE September 17, 2016, through November 13, 2016, in the amount of \$3,291.20. *See* DOHA Claims Case No. 2015-WV-060503.2 (October 29, 2015); and DOHA Claims Case No. 09080401 (August 11, 2009).

Conclusion

The employee's request for relief is denied, and we affirm the July 22, 2019, decision. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board