

DATE: May 6, 2019

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2018-WV-103004.2  
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)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver is not appropriate when an employee is aware or should be aware that he is receiving payments in excess of his entitlement.

**DECISION**

An employee of the U.S. Air Force requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-103004.2, dated April 2, 2019. In that decision, DOHA waived \$2,840.05 of the government's claim and denied waiver of \$3,549.10.

**Background**

Effective August 15, 2010, the employee received a pay adjustment from a pay band under the National Security Personnel System (NSPS) as a YC-02 (\$82,406.00 per annum) to the General Schedule (GS) as a GS-12, step 5 (\$83,475.00 per annum). However, it was later determined that the employee's pay adjustment should have been to a GS-12, step 4 (\$82,876.00 per annum). As a result, the employee was overpaid \$6,389.15 during the period August 15, 2010, through March 31, 2018.

The employee requested waiver of the debt. On his DD Form 2789, *Waiver/Remission of Indebtedness Application*, the employee stated that he became aware of the debt by a memorandum from the Air Force dated September 7, 2017. Therefore, the Defense Finance and Accounting Service (DFAS) recommended our office waive the portion of the employee's

indebtedness resulting from the erroneous salary payments he received prior to notification of the error, and deny the remainder of the debt.

Based on the employee's statement on his waiver application and the record evidence, the DOHA adjudicator waived \$2,840.05, the portion of the erroneous salary payments the employee received prior to being notified of the error on September 7, 2017. The adjudicator denied waiver of the erroneous salary payments the employee received after notification in the amount of \$3,549.10.

In his reconsideration request, the employee acknowledges that he did state on his DD Form 2789 that he became aware of the error when he received the Air Force memorandum dated September 7, 2017. However, he states that he now realizes that statement was incorrect. He states that on September 7, 2017, he became aware of a discrepancy in his pay. During that time, after discussions with his Human Resources Office, he understood that he was due money, not that he owed money. The employee states that he did not become aware of the debt until he received the debt notification letters on April 4, 2018. In addition, the employee believes there is a discrepancy for the amount of the overpayment denied by the adjudicator for the period September 2, 2017, through March 31, 2018 (\$3,549.10), and the notification of indebtedness letters he received from DFAS for that same period (\$1,781.95). He attaches the debt letters from DFAS for the period in question.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interests of the United States. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006) ¶ E4.1.3. 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. *See* Instruction ¶ E4.1.4.

In this case, the DFAS and the DOHA adjudicator relied on the record evidence included in the employee's original waiver request, specifically, the employee's statements on the DD Form 2789 and the Air Force memorandum dated September 7, 2017. The employee now contends that he was notified of a pay discrepancy by the memorandum, not a debt or erroneous payment, and he was not aware of his indebtedness until notification on April 4, 2018. However, this does not change the fact that he was informed by the Air Force of a possible overpayment for civilian employees in his GS-12 pay series. Specifically, the memorandum explained the pay discrepancies and stated that effective September 17, 2017, the Air Force would stop overpayments to civilian employees not entitled to the payments. Under the circumstances, since the employee was aware that there was a discrepancy in his pay, by the memorandum, he should have continued to follow up with his Human Resource Office concerning the reason why he was notified of an overpayment in his salary requiring the possibility of collection. Therefore,

waiver is not appropriate. *See* DOHA Claims Case No. 2017-WV-022302.2 (January 11, 2018); DOHA Claims Case No. 2012-WV-121006.2 (February 26, 2013); and DOHA Claims Case No. 06112735 (December 6, 2006).

Finally, the employee should contact DFAS with any questions concerning the amount of his remaining indebtedness.

### **Conclusion**

The employee's request for relief is denied, and we affirm the DOHA appeal decision to deny waiver. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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Member, Claims Appeals Board