

DATE: September 29, 2020

In Re:)
 [REDACTED]) Claims Case No. 2020-WV-011503.2
)
Employee)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

An employee of the United States Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-WV-011503, dated May 18, 2020. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the employee's debt totaling \$204,211.18.

Background

The employee was a retiring military member on terminal leave when he accepted a civilian position in Spain. When he accepted the position, he explained to the Human Resources Personnel (HR) his situation and advised them that he was vacationing with his family in Spain. The HR then sent him paperwork to complete while he was in Spain. The employee was paid a living quarters allowance (LQA) during the period ending (PPE) December 28, 2013, through the January 19, 2019. DFAS and the Navy later determined after a 2016 audit that he was not entitled to LQA on the basis that he was considered a local overseas hire. As a result, the employee became indebted to the government in the amount of \$204,211.18 for the LQA he

erroneously received. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the employee's request for waiver on the basis that employee should have initially questioned his entitlement to LQA because he was in Spain when he accepted the civilian position.

In the employee's reconsideration request, through his attorney, he submits documentation that he followed his HR's advice in completing the hiring paperwork, including the LQA worksheet. He acknowledges that it was not until 2016 that he was notified of an audit of his account.

Discussion

Under 5 U.S.C. § 5584, 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, misrepresentation, fault, or lack of good faith on the part of the employee. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006).

In this case, we believe the employee had no reason to question his receipt of LQA until he was notified of the audit of his account on August 16, 2016. Therefore, we find that collection of a portion of the erroneous LQA the employee received for the PPE September 23, 2013, through August 6, 2016, in the amount of \$108,243.00, would be against equity and good conscience and not in the best interests of the United States. *See* DOHA Claims Case No. 2016-WV-091301.2 (October 31, 2016).

However, we note that the employee acknowledges that on August 16, 2016, he was notified that he had been identified during the audit of his LQA account as being a locally hired employee receiving LQA. Once the employee knew of a potential error in receiving LQA, he should have held the LQA payments until he obtained further verification. The employee did not acquire title to the erroneous payments and should have held them until a final determination was made that they were his or until he was asked to repay them. *See* DOHA Claims Case No. 2012-WV-101904.2 (December 27, 2012). Therefore, it would not be against equity and good conscience to deny the portion of the overpayment the employee received for the period August 7, 2016, through January 19, 2019, in the amount of \$95,968.18.

Conclusion

For reasons stated above, we hereby waive \$108,243.00. In accordance with DoD 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