

DATE: September 2, 2020

---

In Re: )

[REDACTED] )

) Claims Case No. 2020-WV-012401.2

Claimant )

---

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When an employee is furnished with documentation from her employing agency regarding her entitlements, she has a duty to review such documentation to verify she is receiving her proper entitlements.

**DECISION**

An employee of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-WV-012401, dated May 18, 2020.

**Background**

On July 30, 2013, the employee, a nurse GS-09 step 01 (\$47,448.00 salary per annum), signed a Retention Incentive Service Agreement agreeing to continue her service in her position for one year beginning August 11, 2013, through August 9, 2014, in exchange for retention incentive (RI) payments of three percent of her basic salary. A Notification of Personnel Action (SF-50) issued on August 11, 2013, granted her the entitlement. During the pay period August 11, 2013, through August 24, 2013, the employee properly received her RI payment.

On August 28, 2013, the employee signed and dated a memorandum of record acknowledging that in accordance with a recruitment of nurses program established in 2012, her RI payments would terminate effective September 4, 2013, and she would be promoted to GS-10, effective that same date. An SF-50 was issued effective on September 1, 2013, granting the

employee a promotion to a GS-10 step 01 (\$53,401.00 salary per annum). An SF-50 issued and effective September 7, 2013, terminated the employee's RI. However, due to an administrative error, the employee erroneously continued to receive RI during the period August 25, 2013, through July 8, 2017, causing her to be overpaid \$7,094.86.

The employee requested waiver of repayment of the debt, and the Defense Finance and Accounting Service (DFAS) denied her request. She appealed to DOHA. In the appeal decision, the DOHA adjudicator disagreed with DFAS in regards to a full denial of waiver, and approved waiver of \$57.36, the portion of the overpayment of RI occurring during the period August 25, 2013, through August 31, 2013. The adjudicator found that the employee acted in good faith in accepting this portion of the overpayment because she was advised that her RI would not terminate until September 4, 2013, and she would be promoted to a GS-10 step 01. The adjudicator also noted that after her promotion on September 1, 2013, she did not receive RI for the period September 1, 2013, through September 7, 2013. However, the adjudicator further determined that the erroneous payments of RI the employee received for the period September 8, 2013, through July 8, 2017, in the total amount of \$7,037.50, were not appropriate for waiver. In reaching her determination, the adjudicator noted that the employee was furnished with documentation in the form of SF-50s and leave and earnings statements (LES) that clearly reflected that she erroneously continued to receive RI after it was terminated upon her promotion. Therefore, she should have immediately questioned the fact that after she received her promotion, she continued to receive RI.

In her reconsideration request, the employee states that in 2013 the Army was migrating all SF-50s into e-OPF, and she stopped receiving emails from DFAS with the link to review her LES via the MyPay website. In addition, she did not have access to a government computer to review her pay documentation. The only computer available was in the library, but due to staffing constraints, it was impossible for her to use it. She also had medical issues which necessitated medical treatment during the period September 2012 through April 2013; and again in February 2014. In September 2013 she knew she was expecting a minimal salary increase with regard to her promotion, and had no reason to question the accuracy of the pay deposited into her bank account. She relied on her payroll department to make sure her salary was correct. She states that the overpayment resulted from an administrative error, and therefore the employing agency should be held liable. Finally, she states that this is the second time in the history of her employment that the payroll department failed to correctly process her personnel actions. She states that in 2009 while in receipt of a retention bonus, she was transferred to another department, and no longer was entitled to the bonus. However, the payroll department erred and did not terminate the bonus payments. At that time, she paid her debt in full. She believes that given the circumstances, she should be exonerated from any responsibility for the overpayment of RI error.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee receives if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud,

misrepresentation, fault or lack of good faith on the part of the employee. We have consistently held that if an employee is furnished with documentation or information, which, if reviewed, would cause a reasonable person to be aware or suspect the existence of an error, but she fails to review such documents or otherwise fails to take corrective action, waiver will generally be denied. *See* DOHA Claims Case No. 2015-WV-050101.2 (August 26, 2015); and DOHA Claims Case No. 2011-WV-121602.2 (March 15, 2012).

In this case, the employee acknowledged that she was no longer entitled to receive RI after her promotion in September 2013. Although she may have no longer been receiving a link by email from DFAS to review her LES, this did not alleviate her from her duty to verify the accuracy of her pay. The employee received RI for nearly four years, and this was reflected on each LES issued to her during the period September 2013 through July 2017. We cannot stress enough the importance of a careful review by each employee of the pay data provided by the employing agency, including personnel actions documented in an employee's e-OPF and LES. This pay data is specifically provided to the employee in order for them to verify the accuracy of their salary. Under the circumstances, waiver is not appropriate.

### **Conclusion**

The employee's request for relief is denied, and we affirm the May 18, 2020 appeal decision to deny waiver in the amount of \$7,037.50. In accordance with 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