

DATE: January 11, 2021

In Re:)	
[REDACTED])	Claims Case No. 2019-WV-091302.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee’s salary was miscalculated, causing her to be overpaid. She was unaware she was being overpaid until she was notified in April 2018. Under 5 U.S.C. § 5584, the amounts she was overpaid before notification may be waived. However, the amounts she received after notification may not be waived because she did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

An employee requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-091302, dated September 29, 2020. In that decision, DOHA waived \$6,411.52 of the \$9,816.32 debt the employee owed the government due to the overpayment of salary, but denied waiver of \$3,404.80, the remaining balance of the indebtedness.

Background

In December 2016 the employee was granted Targeted Local Market Supplements (TLMS) as long as she held her polygraph certification. However, it was later determined that since she did not perform polygraph examinations, she was not entitled to TLMS. As a result of this administrative error, her salary was miscalculated during the pay period ending (PPE) December 24, 2016, through the pay period ending PPE April 28, 2018, causing her to be erroneously overpaid salary in the gross amount of \$6,411.52.

In April 2018 the employee was notified by her Division Chief that she was erroneously receiving TLMS. The Defense Finance and Accounting Service (DFAS), while attempting to correct the error and stop the continued payment of TLMS, erroneously underpaid the employee \$425.00 in the PPE May 12, 2018. Further, due to an administrative error, during the PPE May 26, 2018, the employee was erroneously issued retroactive payments totaling \$3,830.40 for TLMS for the PPE January 20, 2018, through May 12, 2018. As a result, the employee was overpaid an additional \$3,404.80 (\$3,830.40 - \$425.60.). Therefore, the total gross amount of the debt owed by the employee increased to \$9,816.32 (\$6,411.52 + \$3,404.80).

The DOHA adjudicator concluded that the employee acted in good faith in accepting the portion of the overpayment in the amount of \$6,411.52, which occurred prior to notification of the error in her salary. She further concluded that since the employee became aware of the overpayment in April 2018, it was not against equity and good conscience to deny waiver of the portion of the overpayment she received during the PPE April 14, 2018, through the PPE May 26, 2018, in the amount of \$3,404.80. In addition, the adjudicator noted that the employee failed to address why she did not question here entitlement to the retroactive payments totaling \$3,830.40 she received in the PPE May 26, 2018.

In her request for reconsideration, the employee states that she did not address the overpayment of \$3,404.80 because she did not believe it was part of her debt. She states that when she received notification of her debt from DFAS, the net amount of her debt was reflected as \$6,021.11. She states that DFAS later sent her a detailed debt computation that reflects the gross amount of her debt as \$9,639.68 with two offsets of \$3,448.97 and \$169.60, reducing her net indebtedness to \$6,021.11. She includes email correspondence concerning her requests for clarification from her Human Resources Office. Based on that correspondence, she believed that she was only indebted for the net amount of \$6,021.11.

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. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). In relevant part, generally, persons who erroneously receive a payment from the government acquire no right to it and are bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. Waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

A waiver is usually not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. In such instances, the recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. See Instruction ¶ E4.1.4. A waiver generally is not appropriate when a recipient of 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 recipient 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. Finally, a waiver may be inappropriate in cases where a recipient 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 recipient knew or reasonably should have known that the advice was erroneous. *See* Instruction ¶ E4.1.6.

In the present case, the employee acknowledges that she was notified in April 2018 that she was not entitled to receive the TLMS payments and was overpaid. The emails she attaches in her reconsideration request reflect that she was told by her Human Resources Office that she was in debt for the TLMS. The emails also reflect that she would be receiving a notification of indebtedness from DFAS concerning her debt. Although she may have thought she was only indebted the net amount of \$6,021.11, she received a leave and earnings statement (LES) for the PPE May 26, 2018, reflecting that she was issued a large retroactive payment of \$3,830.40, after she was alerted of her debt. Her salary payment for the PPE May 26, 2018, increased to \$7,781.76, over \$3,000.00 of her normal gross pay. Under the circumstances, the employee should have set aside the funds for eventual repayment to the government until she had a definite decision concerning her entitlement. .

Finally, the amount of the employee's debt to the government is the gross amount of the erroneous payment, including amounts such as insurance premiums, retirement contributions, and federal and state income tax withholding which are withheld and submitted to the proper authorities on the employee's behalf. If DFAS cannot recoup the deducted amounts from those authorities, the employee must repay those amounts to DFAS unless the entire debt is waived. *See* DOHA Claims Case No. 00073101 (August 21, 2000), *aff'd* Deputy General Counsel (Fiscal), December 21, 2001, citing the Comptroller General's decisions in B-261628, June 13, 1996, and B-261699, Oct. 25, 1996.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2019-WV-091302. Under the authority of DoD Instruction 1340.23, 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: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board