

DATE: September 17, 2021

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-WV-090208.2
)
)

**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 U.S. Army requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-WV-090208, dated June 30, 2021.

Background

The employee was employed by the Army as an engineer. Effective March 3, 2019, the employee was promoted from a GS-13, step 5 (\$108,401.00 per annum) to a GS-14, step 5 (\$116,854.00 per annum). A *Notification of Personnel Action*, SF-50, was issued on April 17, 2019, increasing the employee's salary from \$116,854.00 per annum to \$118,799.00 per annum, effective March 3, 2019. However, it was later determined that the employee's salary should have been established as a GS-14, step 4 (\$115,304.00 per annum). As a result, the employee was overpaid \$1,603.20 during the period March 3, 2019, through August 17, 2019.

In the decision dated June 30, 2021, the DOHA adjudicator followed DFAS's recommendation to waive \$118.40 of the government's claim and deny waiver of \$1,484.80. In

reaching her decision to grant waiver in the amount of 118.40, the overpayment occurring during the period March 3, 2019, through March 30, 2019, the adjudicator noted that the employee accepted this portion of the overpayment in good faith and had no reason to be aware he was being overpaid. However, the adjudicator noted that for some unknown reason on April 17, 2019, an SF-50 was issued increasing the employee's salary to \$118,799.00 per annum. Therefore, the adjudicator found that the employee should have at least questioned why his salary increased. Therefore, the adjudicator denied waiver of the portion of the overpayment in the amount of \$1,484.80, which occurred during the period March 31, 2019, through August 17, 2019.

In his request for reconsideration, the employee presents evidence that reflects he reasonably relied on the SF-50 increasing his salary from \$116,854.00 to \$118,799.00. He explains that when he was initially promoted in 2019 to a GS 14, step 5, the Office of Personnel Management (OPM) had not yet published the pay tables for 2019. On March 28, 2019, OPM then issued guidance to federal agencies on the awarding of retroactive pay increases based on the new pay tables. As a result, the Army Civilian Personnel Advisory Center (CPAC) issued the employee a new SF-50 correcting his salary. Based on this information, the employee believed that his salary was correct and accepted any retroactive payments in good faith in reliance on documents provided by his pay officials and OPM. However, on July 11, 2019, the employee was contacted by an official at CPAC notifying him that his salary upon promotion was calculated incorrectly. He was told that his salary at promotion would be reevaluated.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection 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 there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

In this case, the employee has provided additional information to warrant reversal of the adjudicator's decision to deny waiver of a portion of the overpayment he received during the period March 31, 2019, through July 18, 2019, in the amount of \$1,217.60. However, the employee was notified he was being overpaid on July 11, 2019. Therefore, any payments he received after notification are inappropriate for waiver. Thus, we deny waiver of \$267.20, the overpayment of salary he received after notification.¹

¹The employee received his salary for pay period ending July 6, 2018, on July 18, 2019, after he received notification of the overpayment.

Conclusion

We hereby waive an additional \$1,217.60. 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: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board