

DATE: October 25, 2021

In Re:

[REDACTED]

Claimant

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Claims Case No. 2021-WV-022504.2

**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.

Generally, a travel advance cannot be considered for waiver because it cannot be considered as “arising out of an erroneous payment” for the purposes of 5 U.S.C. § 5584.

DECISION

A civilian employee of the Department of Defense (DoD) requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 2021-WV-022504, dated July 1, 2021.

Background

On November 26, 2018, the employee was selected for an 11-month rotational assignment from January 2019 to December 2019. For that assignment, she was issued temporary duty (TDY) travel orders reassigning from her duty station in Georgia to a temporary duty station in Virginia. On January 28, 2019, she reported to her temporary duty station. On March 5, 2019, she was advised that her TDY would end on July 25, 2019, not in December 2019. During the period March 1, 2019, through July 30, 2019, she received special partial payments (SPPs) in the total amount of \$38,659.32. On July 29, 2019, she returned to her permanent duty station in Georgia. At that time, it was determined that she only incurred travel

expenses in the amount of \$33,378.06. Therefore, she was overpaid \$5,281.26 (\$38,659.32 - \$33,378.06).

The record further reflects that on August 3, 2019, the employee was erroneously issued \$2,318.74 (\$2,014.74 paid to the employee + \$294.00 paid to her Government Travel Card (GTC)) in a final settlement for her travel. Since she was previously overpaid \$5,281.26, her indebtedness to the government increased to \$7,600.00 (\$5,281.26 + \$2,318.74).

The employee subsequently requested waiver of the debt. In her request for waiver, she stated that she was unaware of the indebtedness until October 2019. The Defense Finance and Accounting Service (DFAS) denied her request for waiver on the basis that although the employee was advised in March 2019 that her rotational assignment would end in July 2019, she requested a credit of \$7,000.00 be made to her GTC. This credit was then issued to the employee's GTC and reflected on her Defense Travel System (DTS) account.

In her appeal of DFAS's denial of her waiver request, the employee stated that she was on TDY for a Fiscal Year (FY) 2019 rotational program from January 2019 through December 2019. She stated that the \$7,000.00 credit was for lodging, was issued pursuant to the program and she was not aware of the credit. She stated that the credit of \$7,000.00 was reflected in DTS, minus a personal payment she made from her personal credit card in the amount of \$774.23. She stated that DFAS incorrectly listed her debt as \$7,600.00. She offered to pay \$200.00 per month towards her debt until the waiver appeals process was completed. DFAS reviewed the employee's statements on appeal and sustained the denial of her waiver request. The Human Resources Office (HRO) of the DoD agency responsible for the employee's TDY advised DFAS that the employee requested the \$7,000.00 credit to her DTS account. The HRO further advised DFAS that the program manager for the rotational assignment provided the employee with her travel order and adjusted travel vouchers, which contained the \$7,000.00 credit, upon the employee's return from her TDY assignment. DFAS further explained that the gross amount of the employee's debt was correctly established as \$7,600.00.

In the appeal decision, the DOHA adjudicator specifically detailed the employee's debt by including a monthly list of the payments made to her directly and paid to her GTC, during the period Marcy 1, 2019, through July 30, 2019, in the amount of \$38,659.32. The adjudicator held that the resulting overpayment in the amount of \$5,281.26 during that period of time could not be considered for waiver under the provisions of 5 U.S.C. § 5584, because that portion of the debt did not represent an erroneous payment, but rather was the excess amount of advanced travel payments the employee was paid after consideration of her allowable expenses. The adjudicator denied waiver of the erroneous payment of \$2,318.74 on that basis that the employee had no reasonable expectation to receive any further travel payments after she returned from TDY.

In her request for reconsideration, the employee states that after she returned from her TDY, her GTC paid her a credit of \$7,236.00, not \$7,600.00. She states that she has already repaid the Government \$3,050.00 towards her indebtedness. Therefore, she maintains that her current debt should be further reduced to \$4,186.00 (\$7,236.00 - \$3,050.00). She states that she was also owed a total of \$2,318.74, which includes \$2,024.74 for reimbursement for her mileage and gas on her Privately Owned Vehicle (POV), plus \$294.00, which was due as payment on her

GTC. Therefore, she states that the total she still owes to the Government is \$1,867.26 (\$4,186.00 - \$2,318.74). She requests waiver of that remaining amount.

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. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). A debt cannot be considered for waiver unless the payment was erroneous when made, and we have held that a debt arising from the settlement of an employee's travel after considering the employee's allowable expenses to those advanced to the employee, does not arise from an erroneous payment. *See* DOHA Claims Case No. 01091311 (October 2, 2001); and DOHA Claims Case No. 01081402 (September 18, 2001). A travel advance is based on estimated travel expenses. After travel is completed, the employee's allowable expenses are compared to the amount of the travel advance, and the employee is indebted to the government for the amount by which the advance exceeds the allowable expenses. Since a travel advance is in the nature of a loan and does not usually involve an erroneous payment, the debt created upon settlement of a travel advance, cannot be considered for waiver. Furthermore, if an employee's debt resulted from an erroneous payment and thus, can be considered for waiver, waiver is not appropriate if an employee knows or should know that they are in receipt of erroneous payments.

Preliminarily, although the employee raises concerns about the amount of her debt, we have consistently held that an employee's debt is the gross amount of the debt, not the net. *See* DOHA Claims Case No. 2012-WV-052402.2 (August 23, 2012). As explained by both DFAS and the DOHA adjudicator, the employee was overpaid in the gross amount of \$7,600.00. This amount is the employee's debt, which includes amounts withheld for taxes, and does not include any deductions for payments made by the employee to satisfy the debt. We note that the Government's examination of the gross amount of the debt is consistent with the waiver statute and implementing regulations. When the Government waives all or part of a debt that has been repaid, to the extent of the waiver, a refund will be made to the employee. *See* 5 U.S.C. § 5584(c) and Instruction ¶ E3.6.

We agree with the determination made by the DOHA adjudicator in the appeal decision that waiver is not available for the \$5,281.26. As detailed in the appeal decision, our waiver authority only extends to claims that arise out of erroneous payments. The monthly SPPs received by the employee during her TDY were in the nature of advances, or an estimate of what the employee's travel would cost, and did not represent the employee's final entitlement, or the settlement of her travel voucher. Travel advances are only appropriate for waiver consideration when the employee has received an advance to cover erroneously authorized expenses and spends the advance in reliance on the advance. *See* DOHA Claims Case No. 01081402, *supra*. This was not the situation in this case since there was no administrative error in the payment of the SPPs at issue. Therefore, the \$5,281.26 cannot be considered for waiver.

The employee did receive erroneous payments in the gross amount of \$2,318.74, as a result of administrative error, after her travel was completed. However, when she completed her travel and was then issued another payment in the amount of \$2,318.74, she should have at least questioned why she was being paid anything further for her TDY, especially since she knew she had a large credit on her GTC. Under the circumstances, waiver of the \$2,318.74 is not appropriate.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision dated July 1, 2021. In accordance with DoD Instruction 1340.23 (February 14, 2006) ¶ 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