

DATE: November 3, 2021

In Re:)
[REDACTED]) Claims Case No. 2019-WV-120605.2
Claimant)

**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

A civilian employee of the Department of Defense (DoD) requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-120605, dated June 30, 2021. In that decision, DOHA waived a portion of the claim in the amount of \$2,101.92, and denied waiver of the remaining \$5,375.60.

Background

The employee was erroneously underpaid and then overpaid her salary during the period January 2010 through July 2017, ultimately resulting in an overpayment of \$7,477.52. Of note, as of December 2015 the employee had been underpaid \$1,752.48 in salary. However, during the pay period ending (PPE) January 9, 2016, she erroneously received a large retroactive payment of \$9,700.80 representing salary for the PPE March 7, 2015, through December 26, 2015. As a result, she was overpaid \$7,948.32 (\$9,700.80 – \$1,948.32). During the period January 2016 through July 2017, the employee’s salary continued to be miscalculated sometimes causing her to be underpaid during a pay period, and sometimes causing her to be overpaid, but resulting in the total underpayment of \$470.80. As a result, her total debt decreased to \$7,477.52 (\$7,948.32 - \$470.80)

The employee requested waiver of the debt and the Defense Finance and Accounting Service (DFAS) recommended partial waiver in the amount \$2,101.92, based on the employee's acknowledgement that she knew was being overpaid as of October 4, 2014.

The DOHA adjudicator specifically detailed all underpayments and overpayments of salary during the period in question. The adjudicator followed the recommendation of DFAS, and waived \$2,101.92 of the employee's debt, and denied waiver of \$5,375.60. The adjudicator found that once the employee was aware on October 4, 2014, that she had been overpaid, she should have should have questioned any large overpayments she received after she knew she was being overpaid. Therefore, even though the employee stated that she was not aware of the retroactive payments being made to her were in fact overpayments until she received an email dated October 1, 2019, she should have at least questioned her entitlement to receive the \$9,700.80 retroactive payment she received in the PPE January 9, 2016.

In her request for reconsideration, the employee states that she had no idea that she was being overpaid after 2014. She states that the error regarding the overpayment of the cost of living allowance (COLA) for her colleagues was forgiven. She attaches a memorandum from her command to DFAS dated October 14, 2014, concerning 16 employees who were overpaid COLA since January 2012. Her command gives its endorsement for waiver of those employees' debts. The employee states that her salary issues came after her colleagues' debts were forgiven. She also attaches her leave and earnings statement (LES) for the PPE January 9, 2016, and requests to see the proof that she received such a large retroactive payment in the amount of \$9,700.80 for the PPE March 7, 2015, through December 26, 2015.

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 waiver usually is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* ¶ E4.1.4. In addition, a waiver generally is not appropriate when an employee who receives 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 employee 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.

We have consistently held that an employee is considered to be aware of an erroneous overpayment when in possession of information which reasonably suggests that the validity of the payments received may be in question. Once an employee receives such information which reasonably suggests that the validity of salary payments may be in issue, they should set aside the overpayment for return to the government of any excess amounts received from that time

forward. *See* DOHA Claims Case No. 2019-WV-012208.2 (May 6, 2020).

As reflected on the employee's LES for the PPE January 9, 2016, the employee received a total of \$9,700.80 in retroactive earnings (\$8,651.60 in retroactive regular pay and \$1,049.20 in retroactive COLA). This retroactive payment was in addition to her current earnings for 80 hours in the amount of \$2,842.40 and COLA in the amount of \$348.00. Under the remarks section, it states that a portion of the amount paid to the employee (\$980.01) was collected to satisfy a debt in the amount of \$6,470.40 in accordance with 5 U.S.C. § 5514. Therefore, the employee was on notice at the time she received the large retroactive payment that she was already in debt. Under the circumstances, waiver of the portion of the overpayment she received after she states she was aware of her debt in October 2014 is not appropriate.

Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated June 30, 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