

DATE: June 27, 2022

In Re:

[REDACTED]

Claimant

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) Claims Case No. 2021-WV-070104.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate when an employee knows or should know that she is receiving payments in excess of her entitlement.

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. 2021-WV-070104, dated April 14, 2022. In that decision, DOHA granted waiver of an overpayment in the amount of \$586.94, and denied waiver in the amount of \$4,307.06.

Background

On May 3, 2019, a *Notification of Personnel Action* (SF-50) was issued, appointing the employee as a Nurse, GS-13, Step 06, with a salary of \$103,486.00 per annum, effective June 10, 2019. The employee signed a *Relocation Incentive Service Agreement* dated June 10, 2019, representing 5% of her annual salary, with a bi-weekly payment of \$196.76, a start date of June 23, 2019, and an end date of June 23, 2020. The employee also signed a *Recruitment Incentive Service Agreement* representing 10% of her annual salary, with a bi-weekly payment of \$391.52 for the same period. The SF-50 was processed, and the amounts for both incentives were reflected on the employee's leave and earnings statements (LESs). On February 27, 2020, the Army discovered that the employee was not entitled to receive the relocation incentive and attempted to correct the error by removing the incentive from her compensation. However, the employee continued to be paid both the relocation incentive and recruitment incentive on a biweekly basis through the pay period ending (PPE) June 6, 2020, causing her to be erroneously

be overpaid \$586.94 in the relocation incentive. Additionally, during the PPE May 9, 2020, the employee was erroneously paid a retroactive recruitment incentive payment in the amount of \$4,307.06, which represented biweekly payments for the PPE July 6, 2019, through the PPE April 24, 2020. Consequently, the employee was overpaid \$4,894.00 (\$586.94 + 4,307.06). The Defense Finance and Accounting Service (DFAS) advised DOHA that the employee was not notified of the pay error until June 26, 2020.

In the DOHA decision dated April 14, 2022, the adjudicator concluded that the employee acted in good faith in accepting the erroneous relocation incentive she received biweekly through the PPE June 6, 2020, in the amount of \$586.94. However, the adjudicator determined that when the employee received the \$4,307.06 retroactive payment for recruitment incentive during the PPE May 9, 2020, she should have questioned the appropriate officials regarding her entitlement to receive it since her LESs during the period in question did not indicate she was underpaid, and she had been receiving both incentives on a biweekly basis during the period in question.

In the employee's request for reconsideration, she states she had no reason to question the retroactive recruitment incentive payment issued in the PPE May 9, 2020, because she had been advised that the incentives would be paid out over a period of one year. In addition, she states that she did not notice a large payment. She also states that she relied on her personnel department to set up her pay correctly. Therefore, she requests full waiver of the debt.

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). Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1.

The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting a waiver. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient 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* Instruction ¶ E4.1.4. A waiver generally is not appropriate in cases 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.

The employee's LES in the Current Earnings section for PPE July 6, 2019, showed her first biweekly payment of \$391.52, identified as *RECRUT INCNT*. The Current Earnings section of the LES included the employee's *REGULAR PAY*, as well as other pay, such as the relocation incentive (*RLOC INCT*) and overtime pay. Her LESs through PPE April 25, 2020, showed this recurring \$391.52 *RECRUT INCNT* payment. The employee's LES for PPE May 9, 2020, showed the *RECRUT INCNT* amount in the Current Earnings section changed to \$587.00. The LES for PPE May 9, 2020, also included an entirely new section, Retroactive Earnings. The Retroactive Earnings section showed a payment for *RECRUT INCNT* in the amount of \$4,307.06. The employee states that she would have no reason to question this payment because she was told the incentives would be paid out over a period of one year and she relied on her personnel department to set her pay correctly. This retroactive payment changed previous gross pay from \$4,667.28 and net pay from \$2,284.00 in the PPE April 25, 2020, to gross pay of \$9,169.82 and net pay of \$5,111.43 in the PPE May 9, 2020. She states she did not question the payment but acted as soon as she received notice of the overpayment. Under 5 U.S.C. § 5584, 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. When the employee received the \$4,307.06 retroactive payment, which almost doubled her gross and net salary, she was in receipt of 21 LESs showing a *RECRUT INCNT* payment of \$391.52, which totaled over \$8,000. With a salary of \$103,486.00 per annum, and Recruitment Incentive Service Agreement representing 10% of her annual salary, the employee would expect to receive an annual total of recruitment incentive in the amount of \$10,348.60. The retroactive \$4,307.06 payment meant the employee had received, in less than a year, \$12,889.72 in recruitment incentive payments. The employee should have at least questioned appropriate officials immediately about this entitlement change on her LES and why her recruitment incentive payments had exceeded 10% of her annual salary. Waiver is precluded because she failed to make inquiries or bring the matter to the attention of the appropriate officials. Under the circumstances, she should have held the \$4,307.06 until she received a definite determination of her entitlement to it. *See* DOHA Claims Case No. 2018-WV-122005.2 (March 29, 2019); and DOHA Claims Case No. 2015-WV-050101.2 (August 26, 2015).

Conclusion

The employee's request for relief is denied, and we affirm DOHA's April 14, 2022 decision. In accordance with the Instruction ¶ 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