

the total amount of \$4,726.50. The record reflects that the debt posted to the employee's pay account on September 4, 2014. On September 20, 2014, DFAS notified the employee of the debt. On October 10, 2014, the employee petitioned DFAS for a hearing on the validity of the debt. Although DFAS received the employee's petition, for some unknown reason, DFAS did not conduct his requested hearing. In December 2020 the employee retired from the Army. At that time, DFAS collected \$3,965.43 of the \$4,726.50 overpayment from his final salary.

On March 1, 2021, the employee submitted a DD Form 2789, *Waiver/Remission of Indebtedness Application*, to DFAS. DFAS determined that the employee's request for waiver could not be considered because it was not received by DFAS within three years of discovery of the overpayment. In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's request for waiver could not be considered.

In his request for reconsideration, the employee states that on October 10, 2014, he submitted his petition to DFAS requesting waiver of the debt, and attached supporting documents from his supervisor and command attesting to the fact that he acted in good faith, and received the FLPP without any fault on his part.

Discussion

Upon further review of the case file, we find that the record contains evidence that reflects DFAS received the employee's command's request for waiver on his behalf, by the timely submission of a memorandum dated October 9, 2014, which detailed the circumstances surrounding the indebtedness, and the command's recommendation that DFAS waive the debt in full. Therefore, the employee's waiver request was timely received by DFAS, within three years of discovery of the debt, as required under 5 U.S.C. § 5584(b)(2).

We now turn to an examination of whether the employee's debt should be waived under the provisions of 5 U.S.C. § 5584. Under that statute, DOHA has the authority to waive collection of erroneous payments of pay and allowances an employee receives if collection 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 received two SF-50s reflecting his entitlement to receive the FLPP during the period March 25, 2012, through March 8, 2014. There was no reason for the employee to question his entitlement to FLPP during that period since he met all the requirements for the pay, and reasonably relied on the pay documentation presented to him. Therefore, we believe he reasonably may not have been aware that he was being overpaid, and acted in good faith in accepting the overpayment of FLPP through March 8, 2014, in the amount of \$3,960.60. However, on March 20, 2014, an SF-50 was issued terminating his entitlement to the FLPP, effective that same date. When the employee continued to receive FLPP after issuance of the SF-50 terminating it, he was on notice that he was no longer entitled to receive it. Under the circumstances, waiver of the remaining \$765.90 of the erroneous payment of FLPP paid to him during the period March 9, 2014, through August 23, 2014, is not appropriate for waiver. *See* DOHA Claims Case No. 2020-WV-090208.2 (September 17, 2021).

Conclusion

For the reasons explained above, we hereby waive a portion of the employee's debt in the amount of \$3,960.60. In accordance with Department of Defense 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