

DATE: April 3, 2023

In Re:)
[REDACTED]) Claims Case No. 2022-WV-041309.2
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Title 5, United States Code, § 5584, provides authority for waiving claims for 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 interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

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. 2022-WV-041309, dated August 4, 2022.

Background

The employee sustained an on-the-job related injury in August 2017. The record reflects that the employee received the correct salary during the period August 20, 2017, through September 30, 2017. However, during the period October 1, 2017, through October 28, 2017, the employee was not entitled to receive any salary, but due to an administrative error, she was overpaid \$2,971.78.

The Defense Finance and Accounting Service (DFAS) recommended that DOHA waive the debt. However, the DOHA adjudicator disagreed with DFAS's recommendation and denied waiver of the debt. The adjudicator found that the employee had no reasonable expectation to

receive any salary, during the period of overpayment, since she was in a leave-without-pay status. The adjudicator also found that the record reflected the employee was in receipt of wage replacement benefits from the Department of Labor Occupational Workers' Compensation Program (OWCP) during the period of overpayment. Therefore, the adjudicator found that although the employee may not have had access to her leave and earnings statements (LES) during the period of overpayment, she still should have questioned the receipt of regular salary payments deposited into her bank account, especially since she was also receiving OWCP payments. Under the circumstances, the adjudicator found that it would not be against equity and good conscience to deny waiver of the overpayment of salary.

In her reconsideration request, the employee states that the overpayment resulted from an administrative error that was not her fault. She states that her injury occurred on August 17, 2018, and the OWCP payments started at that time. She states that her timekeeper at the Army had inputted the wrong code in the system which resulted in her salary continuing to be paid even when she was in a leave-without-pay status. She states that she is now having to repay the gross amount of the debt including the taxes. She requests waiver of the debt on the basis of financial hardship.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the government's claims for repayment of erroneous payments of pay and certain allowances made to specified federal employees, 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, misrepresentation, fault, or lack of good faith on the part of the employee. *See* Department of Defense Instruction 1340.23 (Instruction) (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the government is not a sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. 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.

The Board finds that the erroneous salary payments were made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee. However, administrative error, by itself, does not entitle an employee to a waiver. Even if the employee did not have access to her LES, that did not relieve her from the responsibility of verifying her bank statements and questioning any discrepancies. *See* DOHA Claims Case No. 04032919 (March 31, 2004). We have consistently held that an employee has a responsibility to monitor the employee's bank account, and when the employee receives an unexplained salary payment, the employee should be aware of the strong possibility that it is erroneous and promptly bring it to the attention of the appropriate agency officials. *See* DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011); and DOHA Claims Case No. 02022603 (April 17, 2002). Since the employee failed to do so, we consider her to be at least partially at fault in this matter. As she acknowledges in her reconsideration request, she was in receipt of OWCP payments at the time she was overpaid her regular salary. Therefore, when she

received one bank deposit from the OWCP and another separate deposit for her federal salary from DFAS, she had a duty to question the regular salary payment and hold it for eventual repayment to the government. Under the circumstances, waiver is not appropriate.

As for the amount of the debt attributed to the withholding for federal taxes, we have consistently held that the employee's debt to the government is the gross amount of the payment, including amounts such as insurance premiums, retirement contributions, and federal and state income tax withholding which are withheld and submitted to the proper authorities on the employee's behalf. If DFAS cannot recoup the deducted amounts, the employee must repay those amounts to DFAS unless the entire debt is waived. *See* DOHA Claims Case No. 00073101 (August 21, 2000). Finally, we note that financial hardship is not a factor for consideration in determining whether a waiver is appropriate under 5 U.S.C. § 5584. However, while financial hardship does not provide a basis for waiver, DFAS, at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account.

Conclusion

The employee's request for relief is denied, and we affirm the decision dated August 4, 2022. 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
Chairperson, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board