

DATE: May 17, 2023

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2022-WV-090705.2
)
)

**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.

DECISION

An employee of the U.S. Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA), dated January 3, 2023, in DOHA Claim No. 2022-WV-090705.

Background

The employee, a scientist employed by the Navy, worked in Pearl City in Honolulu, Hawaii, on the Island of Oahu. On April 17, 2014, he completed a telework agreement designating his alternate worksite as his home located in Hilo, Hawaii, on the Big Island Hawaii, with an effective start date of June 2, 2014, and end date of June 1, 2015. As set forth in his telework agreement, the employee stated he would be teleworking five days per week with duty hours on Monday through Thursday from 7:00 AM until 4:30 PM, and Friday from 7:00 AM until 3:30 PM. The employee noted that all his job duties would be performed by telework at his home. In that agreement, directly below the employee's signature, was a paragraph stating the following:

9. OFFICIAL DUTY STATION. The teleworker's official duty station for such purposes as special salary rates, locality pay adjustments, and travel is Pearl City, Hawaii. Note: If the employee's official duty station changes as a result of the teleworking the employee and supervisor must sign the special certification signature blocks on the last page of the agreement. (Official Duty Station: The official duty station for an employee covered by a telework agreement is the location of the regular worksite for the employee's position (i.e., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report to that regular worksite. Otherwise, the duty station is the location of the telework site (i.e., home, telework center, or other alternative worksite), except in certain temporary situations. A change to an employee's official duty station may affect the employees local market supplement (LMS) pay adjustments or other pay allowances, as applicable.

On page 10 of the agreement, the employee and the employee's supervisor signed in acknowledgement that a duty station change may affect the employee's LMS pay.

On June 8, 2014, a *Notification of Personnel Action*, SF-50, was issued changing the employee's duty station to Hilo. However, on September 21, 2014, another SF-50 was issued inadvertently changing the employee's duty station back to Pearl City. Since the employee teleworked from his home in Hilo five days per week, his home address should have been designated as his official duty station, and he should have received locality pay (local market supplement (LMS)) based on his home address. However, due to an administrative error, the employee continued to receive LMS based on Pearl City, which was higher than the LMS authorized for Hilo. The record reflects that the employee was erroneously overpaid LMS in the total amount of \$35,417.60 during the period June 2, 2014, through August 31, 2019.

On May 24, 2021, the employee executed the DD Form 2789, *Waiver/Remission of Indebtedness Application*, requesting waiver of his debt in the gross amount of \$35,417.60. On that form, the employee stated that he became aware of the overpayment of LMS on August 21, 2018, when his supervisor called him to notify him of the pay error concerning his duty location. He stated that he was unaware that his county locality pay was different than the rest of Hawaii. He stated that his administrative staff also assumed that locality pay was the same for all of Hawaii. Therefore, they were unaware of the requirement to change his duty location and advise him of it in 2014 when he moved to his new duty location. The employee's supervisor did not sign the DD Form 2789 because he stated that the payroll department did not support the employee's waiver request.

On September 9, 2021, the Defense Finance and Accounting Service (DFAS) notified the employee that they were considering his debt for waiver and requested further information. The employee responded to DFAS and stated that he moved to Hilo to work from home because his spouse wanted to be closer to her aging parents. He stated that his duty location changed to Hilo officially in June 2014, but he did not actually move to Hilo until October 2014.

On March 14, 2022, DFAS denied the employee's request for waiver. DFAS stated that they had requested all the employee's annual telework agreements, but only were provided with

the 2014 agreement and a 2017 agreement. DFAS cited language in the 2017 telework agreement that stated the employee's duty station was the location of the regular worksite for the employee's position, *i.e.*, the place where the employee would normally work absent a telework agreement, as long as the employee was scheduled to physically report at least once a week on a regular and recurring basis to that regular worksite; otherwise the duty station was the location of the telework site, *i.e.*, home, telework center, or other alternative worksite. DFAS found that since the employee knew that his duty station changed to Hilo in June 2014, he should have questioned why it changed back to Pearl City in his subsequent SF-50s. Therefore, DFAS concluded that the employee should have set aside the additional funds until the matter was resolved in the event he was indebted to the government.

On March 31, 2022, the employee appealed DFAS's decision. The employee presented evidence to show that the SF-50 DFAS relied on, that appeared to be issued on June 8, 2014, reflecting his duty station as Hilo, was not actually created until July 21, 2019. He showed screen shots of his electronic Official Personnel File (eOPF), downloaded from the eOPF website, that verified his version of events. He stated that there was no change to his leave and earnings statements (LES), since his duty station never changed to Hilo because no SF-50 was issued in 2014.

In the recommendation and administrative report sent to DOHA dated June 28, 2022, DFAS recommended that the original decision be overturned, and that DOHA waive the employee's debt in the amount of \$28,235.20 for the period June 2, 2014, through August 18, 2018, and deny the remainder of the debt in the amount of \$7,182.40 for the period August 19, 2018, through August 31, 2019. DFAS stated that the employee had adequately explained that the SF-50s were not provided to him in 2014 to reflect a duty location change. However, when the employee was notified of the error by his supervisor on August 21, 2018, he should have held the money until the government recouped the amount from him.

In the appeal decision, the DOHA adjudicator declined to follow DFAS's recommendation of partial waiver of the debt. The adjudicator found that based on the record evidence, the employee should have been aware that his official duty station should have been based on his home address in Hilo, instead of Pearl City in Honolulu. The adjudicator pointed to the language in the telework agreements as placing the employee on notice that, since he did not physically report to his regular worksite in Pearl City at least once a week on a regular and recurring basis, his official duty station became the location of the telework site, the employee's home in Hilo. The adjudicator thus found that waiver was not appropriate in the employee's case.

In his request for reconsideration, the employee states that he was never correctly notified of a duty location change. He presents new evidence in the form of his labor systems timecards that reflects the Navy and his administrative staff considered him to be a remote worker, not a teleworker. He states that the error was not discovered until later that he should not have been placed on a telework agreement.

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.

In this case, the employee has provided additional information to warrant partial reversal of the adjudicator's decision to deny full waiver of the resulting debt. Under the circumstances, we believe that the employee had no reason to question the accuracy of the part of his salary attributable to the amount of his LMS until he was advised by his supervisor of the mistake with his duty station on August 21, 2018. During the period June 2, 2014, through August 4, 2018, there was no reason for the employee to question his entitlement to his LMS since he reasonably relied on the pay documentation presented to him. Therefore, we waive the employee's debt through the pay period ending August 4, 2018, in the amount of \$27,971.20. However, as of August 21, 2018, the employee was on notice of an error in his salary when he was notified by his supervisor. At that point, the employee should have held any additional funds he received for eventual repayment to the government. We note that the employee received his salary for the pay period August 5, 2018, through August 18, 2018, on August 24, 2018. Thus, waiver of the remaining \$7,446.40 of the erroneous payment of LMS paid to the employee for the period August 5, 2018, through August 31, 2019, is not appropriate for waiver. *See* DOHA Claims Case No. 2022-WV-020306.2 (July 12, 2022).

Conclusion

For the reasons explained above, we hereby waive a portion of the employee's debt in the amount of \$27,971.20. In accordance with DoD 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