

DATE: October 16, 2023

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In Re: )  
          [REDACTED] ) Claims Case No. 2022-WV-110107.3  
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Claimant )

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**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. Army requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-WV-110107.2, dated July 28, 2023. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remaining indebtedness.

**Background**

On October 16, 2019, the employee, an attorney, GS-13, signed a *Recruitment, Relocation and Retention Service Agreement* agreeing to serve in the Army Recruiting Command for 12 months from August 4, 2019, through August 1, 2020, in exchange for retention incentive (RI) payments at the rate of 22 percent of his annual salary. That agreement was also signed by the nominating official and the approving official. As a result, a *Notification of Personnel Action* (SF-50) issued on August 4, 2019, granted the employee the RI entitlement effective the same date. The employee properly received RI payments during the period August 4, 2019, through August 1, 2020. However, the employee continued to receive RI payments after August 1, 2020. On September 15, 2020, the employee completed an agreement to serve in the Army Recruiting Command for 12 months from August 7, 2020, through August 6, 2021, in exchange for RI

payments at the rate of 23 percent of his annual salary. It was later determined that although the employee and the nominating official signed the agreement in September 2020, the agreement had not been approved by the approving official. As a result of this administrative error, the employee was not entitled to receive RI payments during the period August 2, 2020, through April 24, 2021, causing him to be overpaid \$22,292.71.

When the administrative error was discovered, the employee was issued an SF-50 on April 20, 2021, terminating the RI payments. In addition, on April 21, 2021, the employee received an email notification from his electronic official personnel folder (e-opf) advising him that documentation had been added to his file. On April 23, 2021, the employee sent an email to his supervisor stating that he had received the SF-50 terminating his RI retroactive to August 2020. The employee followed up with another email to his supervisor on April 26, 2021, stating that he received the SF-50 a week before terminating his retention incentive retroactive to August 2020.

The employee requested waiver of repayment of the debt in the amount of \$22,292.71 on July 1, 2021. The Defense Finance and Accounting Service (DFAS) recommended that DOHA waive the employee's debt for the overpayment of RI from August 2, 2020, through April 10, 2021, in the amount of \$21,116.15, and deny waiver of the overpayment of RI from April 11, 2021, through April 24, 2021, in the amount of \$1,176.56. The DOHA adjudicator disagreed with DFAS's recommendation and determined that the employee acted in good faith in accepting the overpayment of RI in the amount of \$19,939.59, but denied waiver of \$2,353.12. The adjudicator held that since an SF-50 was issued on April 20, 2021, terminating the employee's entitlement to RI retroactive to August 2020, and the employee was notified that the SF-50 was posted to his e-opf by email on April 21, 2021, he should have questioned the RI payment he received with his salary on April 22, 2021, for the pay period March 28, 2021, through April 10, 2021. Since he was on notice of the pay error, it was not against equity and good conscience to collect the overpayment of RI made from March 28, 2021, through April 24, 2021.

In his reconsideration request, the employee requests waiver of the RI payments for the period March 28, 2021, through April 10, 2021. He states that the SF-50 was issued on April 20, 2021, ten days after the pay period ended on April 10, 2021. He states that he had no notice of the termination of RI prior to, or during, the pay period in which this portion of the waiver amount was denied. The employee also maintains that he was not notified of the termination of his RI until Friday, April 23, 2021, one day before the end of the next pay period, April 24, 2021. He argues that it would be arbitrary and unreasonable, as well as against equity and good conscience, to deny waiver of this portion of the overpayment. He states that he acquired title to the overpayments through Friday, April 23, 2021, and had no reason to question the money he received. He states that as of Friday, April 23, 2021, his duty days for that pay period were completed. The employee contends that the Army failed to provide him with due process with the abrupt issuance of the SF-50 terminating his RI payments. He cites the Supreme Court's holding in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985), that before taking an adverse action against an employee, an agency must provide the employee with notice and an opportunity to respond to the proposed action. He states that the Army, including his leadership, did not provide him with notice and an opportunity to respond to the proposed termination of his RI.

## Discussion

Our authority in this matter pertains to the appropriateness for waiver under 5 U.S.C. § 5584. Preliminarily, we must stress that DOHA has no authority over the establishment of a debt against an employee. Under the *Debt Collection Act*, 5 U.S.C. § 5514, DFAS has the authority over the establishment of debts, including the calculation and amount of a debt, notifying the employee of the debt, conducting due process hearings on the validity of the debt, and any resulting repayment plan established, and recoupment and collection actions. By requesting waiver of his debt, the employee has acknowledged its validity for the purposes of consideration under 5 U.S.C. § 5584. Under that statute, DOHA has the authority to waive collection of erroneous payments of salary made to 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, fault, misrepresentation, or lack of good faith on the part of the employee. The statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). The Standards for Waiver Determinations are found at Enclosure 4 of the Instruction. In relevant part, a person who receives an erroneous payment from the government acquires no right to it and is bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. 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.

A waiver is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. An employee is considered to be aware of erroneous payments when he possesses information which reasonably suggests that the validity of the payments may be in question. In such a case, the employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

In this case, the employee states that he was notified on April 23, 2021, that his RI payments had been terminated. However, the record reflects that an SF-50 was issued on April 20, 2021, terminating his RI payments retroactive to August 2020, and an email was sent to the employee on April 21, 2021, advising him that a new document was posted to his e-opf. As the DOHA adjudicator referenced in the record, the employee then sent an email to his supervisor on April 23, 2021, attaching the SF-50 and advising his supervisor that he had received “a SF-50 this week that [his] retention incentive was terminated.” Under the circumstances, we agree that the employee acted properly in notifying the appropriate official about the error. However, we find no error in the adjudicator’s finding that the employee was on notice by virtue of the SF-50 issued on April 20, 2021, that his RI was terminated retroactive to August 2020, prior to receiving his salary on April 22, 2021. The employee was furnished with documentation reflecting that his RI payments had terminated prior to receiving his salary for the pay period March 28, 2021, through April 10, 2021. Once the employee was on notice that he was overpaid, he had a duty to notify an appropriate official but also set aside the funds for eventual repayment to the government. *See* DOHA Claims Case No. 2014-WV-090207.2 (June 11, 2015); DOHA Claims Case No. 2010-WV-010810.3 (May 24, 2010); DOHA Claims Case No. 98040118 (July 6, 1998); and DOHA Claims Case No. 98040110 (June 8, 1998). Although the employee suggests that he did not understand that the indebtedness encompassed his duties that

had already been performed, he was on notice that his RI was terminated effective August 2020. Thus, he was aware that any further payments received for RI were questionable. In this regard, the significant date is the date the employee receives the information, before his pay was issued, that his pay was incorrect, not the date when the work was actually performed. *See* DOHA Claims Case No. 2010-WV-010807.3 (April 30, 2010). Accordingly, we uphold the decision to deny waiver of \$2,353.12.

Concerning the employee's argument of not having been provided due process, our decision in this matter does not preclude the employee from seeking other available remedies. If the employee wishes to contest the validity of the debt by disputing it, and proving his entitlement, that is a separate issue from the waiver process under 5 U.S.C. § 5584. DOHA has no authority to adjudicate the validity of debts that arise from disputes involving civilian employee compensation. The validity of such debts must be resolved by the agency concerned, here the Army and DFAS, and ultimately the Office of Personnel Management. *See* 31 U.S.C. §3702(a)(2).

### **Conclusion**

The employee's request for reconsideration is denied, and we affirm the decision dated July 28, 2023. In accordance with DoD Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairperson, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board