

DATE: May 8, 2024

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In Re: )  
          [REDACTED] ) Claims Case No. 2023-WV-011012.2  
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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 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.

The fact that a debt arose due to an administrative error does not entitle an employee to waiver or relieve the employee of the responsibility to verify the correctness of the payments received.

**DECISION**

A civilian employee of the Department of the Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2023-WV-011012, dated November 9, 2023.

**Background**

The employee was employed by the Department of Veterans Affairs (VA) in the competitive service as a Cook, WG-7404-12. In this position, his retirement plan was coded as KF - Federal Employees Retirement System - Further Revised Annuity Employees (FERS-FRAE) and FICA (Federal Insurance Contributions Action). A Notification of Personnel Action, SF-50, issued on September 2, 2016, granting the employee a general salary adjustment, reflected his retirement plan was coded as KF – FERS-FRAE. FERS-FRAE is retirement coverage for employees hired after December 31, 2013. As a result of the employee’s retirement

plan code, 4.4 % of his biweekly salary was properly withheld for his retirement plan. On June 2, 2016, he was selected for a position with the Department of the Navy as a Food Services Specialist, GS-1667-12. On October 30, 2016, the employee was transferred from the VA to the Navy. The *Notification of Personnel Action*, SF-50, transferring the employee to the Navy, reflected that his retirement plan was K - FERS and FICA. K – FERS and FICA is retirement coverage for employees hired beginning January 1, 1986, through December 31, 2012. As a result of the employee’s retirement plan code being coded as K – FERS and FICA, 0.8 % of his biweekly salary was withheld for his retirement plan. However, the Defense Finance and Accounting Service (DFAS) later determined that the employee’s retirement plan should have remained as KF - FERS-FRAE and FICA, and 4.4 % of his biweekly salary should have been withheld for his retirement plan. Due to this administrative error, the employee’s salary was miscalculated during the pay period ending (PPE) October 30, 2016, through November 6, 2021, causing him to be overpaid \$14,357.85.

The employee requested waiver of the debt. On September 22, 2022, DFAS denied the employee’s waiver request. DFAS determined that if the employee had reviewed his leave and earning statements (LES) and his SF-50 upon his transfer from the VA to the Navy, he would have noticed the changes to his retirement plan code. At that point, he should have questioned why the code changed and set the funds aside until he verified his entitlement with the appropriate officials.

In the employee’s appeal of DFAS’s denial of his waiver request, he attached an email dated August 23, 2016, sent to him by a Navy Human Resources Specialist. In that email, the specialist requested that he provide his most recent non-award SF-50 so that if he were selected for the position in the Navy, his pay would be set correctly. The employee complied with the request and submitted his SF-50. He stated that based on the email and his compliance, he relied on Human Resources to set his pay correctly. In an administrative report dated December 21, 2022, DFAS sustained their denial of the employee’s request for waiver. DFAS noted that although the overpayment resulted from an administrative error, the employee still should have questioned the discrepancies provided to him in his pay documentation.

In the DOHA appeal decision, the adjudicator upheld DFAS’s denial of the employee’s waiver request. The adjudicator stated that waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. The adjudicator found that the employee was furnished with documentation from his employing agency that detailed his entitlements, and that he had a duty to review that documentation to verify he was in receipt of his proper entitlements. The adjudicator noted that although the employee stated that he was told that his salary would be set correctly by a Human Resources Specialist, he did not provide an explanation as to why he did not question the discrepancy between his retirement plan coding as reflected on his SF-50 from the VA and his SF-50 from the Navy. Under the circumstances, the adjudicator concluded that waiver was not appropriate.

In the employee’s request for reconsideration, he requests a hearing in front of an administrative judge concerning his waiver request. He states that the Human Resources Assistant who signed his SF-50 on October 30, 2016, committed fraud when his retirement code

was changed from KF - FERS-FRAE and FICA to K – FERS and FICA. He also states that the retirement codes are ambiguous and that no reasonable person would be able to notice a change in them.

### **Discussion**

Employees entering the civilian service after December 31, 1986, are covered by the Federal Employees Retirement System (FERS). *See* 5 U.S.C. § 8411(b). Employees under FERS pay 0.8% of their salary as the employee retirement contribution. *See* 5 U.S.C. § 8422(a)(3)(A). Congress created a new subcategory of FERS, referred to as Revised Annuity Employee (FERS-RAE), in 2012. *See* Pub. L. No. 112-96, § 5001, 126 Stat. 156, 1999 (2012). Employees under FERS-RAE, those entering the civilian service beginning January 1, 2013, through December 31, 2013, pay 3.1% of their salary as the employee retirement contribution. *See* 5 U.S.C. § 8422(a)(3)(B). Another subcategory of FERS, the Further Revised Annuity Employee (FERS-FRAE), was created in 2013. *See* Pub. L. No. 113-67, § 401, 127 Stat. 1165, 1183 (December 26, 2013). Employees under FERS-FRAE, those entering civilian service beginning January 1, 2014, pay 4.4% of their salary as the employee retirement contribution. *See* 5 U.S.C. § 8422(a)(3)(C).

Under 5 C.F.R. § 841.505, an agency must collect the correct amount of employee contributions towards FERS which should have been deducted from an employee's basic pay but was not deducted. Any portion of the payment that should have been deducted but was not deducted from an employee's basic pay, constitutes an overpayment of pay, subject to collection by the agency from the employee, unless waived under 5 U.S.C. § 5584. *See* 5 C.F.R. § 841.505(d).

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. The fact that the debt arose due to administrative error does not entitle an employee to waiver or relieve the employee of the responsibility to verify the correctness of the payments received. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.

Waiver 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, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. Under circumstances in which an employee should have been aware of an error, we have consistently held that waiver is not appropriate in cases where the employee has records (such as leave and earnings statements and SF-50s) which, if reviewed, would indicate the existence of an error, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action. *See* DOHA Claims Case No. 2017-WV-081003.2 (December 8, 2017); DOHA Claims Case No. 09032306 (April 15, 2009); and DOHA Claims Case NO. 03101402 (October 20, 2009). It is the employee's responsibility to review materials

provided to the employee in order to ensure the pay and benefits are recorded correctly, and question any discrepancies reflected in the documentation provided.

In this case, the member has provided no additional information to warrant reversal of the adjudicator's decision to deny waiver. Although the employee stated that he relied on Human Resources to make sure he was being paid correctly, he still had a duty to verify the documentation he received. In this regard, he had in his possession an SF-50 issued to him by the VA that reflected under Employee Data, Block 30. Retirement Plan, that his retirement plan code was KF and then listed next to the code, "FERS FRAE AND FICA (FULL)." He provided that SF-50 to the Human Resources Specialist at the Navy on August 23, 2016. Upon transfer from the VA to the Navy, he was issued an SF-50 on October 30, 2016, that reflected under Employee Data, Block 30. Retirement Plan, that his retirement plan code was K and then listed next to the code, "FERS AND FICA." On that same SF-50, under Block 45. Remarks, it stated the following:

Employee is automatically covered under FERS, FERS-RAE, or FERS-FRAE.

Under the circumstances, the employee had a duty to review both SF-50s and bring any discrepancies to the attention of proper officials. We further note that other information is contained on the employee's SF-50 under Employee Data, such as the employee's code for Veterans Preference, the employee's code for Tenure, the employee's Veterans Preference for a Reduction in Force (RIF), the employee's code for Federal Employees Group Life Insurance (FEGLI), and the employee's Service Computation Date for Leave. All of the information set forth above was the same on both the employee's SF-50 from the VA and his SF-50 from the Navy. The only information that differed was that contained under Block 30. Retirement Plan. Careful review of the employee's SF-50s would have made him aware that there was a discrepancy in his retirement pay coding. Since he failed to review the information provided to him, and he did not question the discrepancy in the coding, waiver is not appropriate.

## Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision dated November 9, 2023. In accordance with 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