

DATE: August 28, 2024

In Re:)

[REDACTED])

) Claims Case No. 2023-WV-041208.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of an employee's debt is not appropriate where the employee is aware or should be aware that he is receiving payments in excess of his entitlements. He does not acquire title to the excess amounts and has a duty to retain them for eventual repayment to the Government.

DECISION

A former employee of the Department of Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-WV-041208, dated March 19, 2024. In that decision, DOHA sustained the Defense Finance and Accounting Service's (DFAS's) denial of the employee's request for waiver.

Background

The employee was employed as an aerospace engineer with the Army. On April 28, 2018, the employee was awarded a \$200.00 Individual Suggestion/Invention Award (IS/IA). However, due to an administrative error, he did not receive this IS/IA payment. On April 28, 2018, a *Notification of Personnel Action*, SF-50, was issued granting the employee a voluntary retirement. Block 6-B of the SF-50 reflected that the employee would receive a separation incentive payment and the Remarks section stated:

Lump Sum of \$40,000.00 to be paid 28-APR-2018.

The employee separated from the Army and during the pay period ending (PPE) May 12, 2018, he properly received a \$40,000.00 lump sum Voluntary Separation Incentive Payment (VSIP). After discovering that the employee had never received the \$200.00 IS/IA, he was

issued payment of the \$200.00 in December 2020. However, due to an administrative error, he was also issued duplicate VSIP of \$40,000.00. As a result, the employee is indebted to the United States in the amount of \$40,000.00.

The employee requested waiver of the indebtedness by submitting a DD Form 2789, *Waiver/Remission of Indebtedness Application*. In his waiver request, the employee stated that the funds were paid to him without notice, authorization, or approval at the end of the calendar year in 2020. He stated that the funds appeared to be an expected patent royalty payment. He also stated that a large percentage of the funds were sent to the federal and state taxing authorities, and now he is being asked to repay the full amount. DFAS subsequently denied waiver of the debt under 5 U.S.C. § 5584, and the employee appealed to DOHA. In the employee's appeal, he stated that he was expecting a \$200.00 patent award in addition to a payment for royalties due him over the course of three years. He also stated that the Army had informed him that he would receive a royalty payment at the end of 2020. He stated that royalty payments were typically from \$833.00 to \$25,000.00 per year, and therefore, when he received the \$40,000.00 VSIP in December 2020, he assumed it was the royalty payment.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the employee's waiver request, finding that when the employee received an unexplained significant lump sum payment two years after he separated from his employment with the Army, he reasonably should have contacted the proper pay officials or his prior Human Resources Office to ascertain his entitlement to the payment. Since he failed to do so, the adjudicator concluded that waiver was not appropriate.

In the employee's request for reconsideration, he states that on December 19, 2020, he received a check for \$24,940.66 in an envelope with no other paperwork or identifying information. He attaches a copy of the envelope to his reconsideration request. He states that he was expecting a royalty check and the amount of the enclosed check was not unusual. He states that he was also expecting a patent award check in the amount of \$200.00 or \$250.00. When he received the check for \$24,940.66, he immediately contacted his administrative office of his old directorate and asked them to confirm his patent award amount. He was told by his administrative office that the amount of the patent award was \$200.00. Therefore, he states that he reasonably assumed that the check for \$24,940.66 he received was for a royalty payment promised to him by the Army. He also states that he received a leave and earnings statement (LES) in January 2021, reflecting payment in the gross amount of \$40,200.00. When he received the LES, he states he was first alerted to the fact that it was not the royalty check he was expecting. He also attaches a copy of the LES to his reconsideration request. He states he then immediately contacted his old directorate to find out what was going on. He states that he was told by DFAS not to send back any funds until a repayment request was sent to him by DFAS because the funds would get lost in the system. He states that after multiple communications with DFAS, it was requested that he refund \$40,000.00 to the Government. On February 14, 2023, he states that he made an electronic payment of \$40,110.44 to the Government (which included interest charges). He states that due to an administrative error, he is now out \$15,369.78 of his personal funds because it is likely he will never recover the funds withheld as taxes. He requests that waiver be granted for the amount withheld for taxes, \$15,369.78.

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. 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) ¶ E4.1.3. 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.

Although the employee states that he was expecting a royalty payment, he acknowledges that the check he received came to him in an envelope with no paperwork or other identifying information. We do note that the copy of the envelope has a return address of DFAS in Cleveland, Ohio, and the copy of the enclosed U.S. Treasury check, dated December 17, 2020, in the amount of \$24,940.66, is signed by DFAS. Therefore, as the adjudicator concluded, the employee should have held the check until the employee contacted the appropriate officials concerning his entitlement to it. Under the circumstances, the employee did not acquire title to the money and waiver is not appropriate. *See* DOHA Claims Case No. 02022603 (April 17, 2002).

As for the amount of the debt attributed to the withholding for taxes, we have consistently held that the employee's debt to the Government is the gross amount of the payment, including amounts for 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. 2022-WV-041309.2 (April 3, 2023).

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision dated March 19, 2024. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

Signed: Richard C. Ourand, Jr.

Richard C. Ourand, Jr.
Administrative Judge
Member, Claims Appeals Board

Signed: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board