

DATE: November 12, 2024

\_\_\_\_\_)  
In Re: )  
[REDACTED] ) Claims Case No. 2023-WV-080902.2  
)  
Claimant \_\_\_\_\_)

**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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

Waiver consideration under 5 U.S.C. § 5584 is limited by a statute of limitations; an employee must request waiver within three years after the agency involved discovers the erroneous payments which gave rise to the debt.

**DECISION**

An employee of the U.S. Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-WV-080902, dated May 28, 2024. In that decision, DOHA upheld the Defense Finance and Accounting Service’s (DFAS) determination that the employee’s application for waiver in the amount of \$49,020.16 could not be considered because it was not received within the 3-year statute of limitations.

**Background**

On January 5, 2007, the employee received a *Notification of Personnel Action* (SF-50), granting him a general salary adjustment to \$78,072.00 per annum, effective January 7, 2007. In addition, the employee began receiving Air Traffic Control (ATC) premium pay based on five percent of his regular salary. However, it was later determined that the employee was not entitled to receive ATC premium pay. On September 7, 2017, the Department of the Air Force Headquarters Personnel Center (AFPC) Commander issued the employee a memorandum

entitled *Notification of Air Traffic Control (ATC) Pay and Administrative Discrepancies*. That memorandum's stated purpose was to officially notify him that as a result of an audit, his civilian pay record was identified as having a pay and/or administrative discrepancy in one or more of the listed areas. He was further advised that effective September 17, 2017, the AFPC would stop overpayments of civilian ATC airmen not entitled to the listed pay. The record reflects that the employee received his final ATC premium pay payment on September 16, 2017. Since the employee erroneously received ATC premium pay during the period January 7, 2007, through September 16, 2017, he was overpaid \$49,020.16.

On October 6, 2021, the employee submitted a DD Form 2789, *Waiver/Remission of Indebtedness Application*, to DFAS. On that form in answer to the block 12, "State the date and how you first became aware of the debt or erroneous payment," the employee answered by stating the AFPC's memorandum dated September 7, 2017, and attached the memorandum to his waiver request. DFAS determined that the employee's request for waiver could not be considered because it was not received by DFAS within three years of discovery of the overpayment. In the employee's appeal of DFAS's determination, he stated that he did not receive the official notification of his debt until May 8, 2021. In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's request for waiver could not be considered. The adjudicator found that the determinative date, in the running of the statute of limitations on waiver consideration, is the date the erroneous payment was discovered by the administrative office. Therefore, the official notice to the employee is not relevant in fixing such date.

In his request for reconsideration, the employee contests the validity of his debt. He states that he is entitled to the ATC premium pay, as outlined in his official duties, set forth in his hiring contract dated September 7, 2004. He states that his core duties never changed. He submits extracts from the current Office of Personnel Management (OPM) designation for the special rate pay for his position. He cites to a study completed by the Rand Corporation on Air Force civilian compensation and benefits entitled *How Five Mission Critical and Hard-to-Fill Occupations Compare to the Private Sector and Key Federal Agencies*, published February 10, 2021. He argues that if DOHA denies his claim for the ATC premium pay, DOHA should consider waiver of his debt on the basis of extreme financial hardship.

### **Discussion**

Our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we may waive a claim for an erroneous payment of pay or allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. However, we may not waive collection of an erroneous payment if the employee's application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. The employee's actual or imputed knowledge of the time limitation is irrelevant under 5 U.S.C. § 5584(b)(2). *See* DOHA Claims Case No. 2012-WV-110902.3 (May 2, 2013); and DOHA Claims Case No. 2011-WV-041101.2 (December 20, 2011). The 3-year period runs from the date that the error is discovered by the appropriate

official, which in this case, is September 7, 2017. Since the employee's written waiver application was not received until October 6, 2021, we have no authority to consider it. *See* DOHA Claims Case No. 2012-WV-110902.3, *supra*; DOHA Claims Case No. 2012-WV-091003.2 (February 12, 2013); DOHA Claims Case No. 06070704 (July 17, 2006); and DOHA Claims Case No. 99050610 (May 27, 1999).

As for the employee's contention that the debt is not valid because he was entitled to the ATC premium pay, the validity of the debt is an issue separate from the waiver process under 5 U.S.C. § 5584. The establishment of a debt is a matter primarily for administrative determination, and DOHA will ordinarily not question a determination in the absence of clear error. *See* DOHA Claims Case No. 2021-WV-072004.2 (May 6, 2022). In addition, 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, in this case the Air Force, and ultimately OPM. *See* 31 U.S.C. § 3702(a)(2).

### Conclusion

For the reasons explained above, we affirm DOHA's appeal decision dated May 28, 2024, that waiver of collection of the employee's debt may not be considered because the waiver request was not received within three years after the agency's discovery of the erroneous payments. 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

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Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr.

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

SIGNED: Michelle P. Tilford

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Michelle P. Tilford  
Administrative Judge  
Member, Claims Appeals Board