

The adjudicator denied waiver of \$537.50, which represented the \$492.50 he erroneously received in reimbursement of *per diem* during two periods of local travel for less than 24 hours; and the \$45.00 for the employee's dinner expense when he had already been reimbursed \$99.00 in *per diem* to cover the cost of his meals for the day. The adjudicator found that the employee should have known that he was not entitled to receive *per diem* for local travel that did not exceed 24 hours. She noted that in the employee's initial waiver request, he stated that he and his staff took great pride in being up to date on policies and procedures, and were diligent about taking the appropriate travel-related training. Although the employee stated that he was not aware of the policy change to designate Raleigh as within the local area, the adjudicator found that the policy was published and distributed to the installation offices. She also found that the employee should have been aware that since he was already receiving *per diem*, he was not entitled to claim an additional meal payment.

In his request for reconsideration, the employee only requests waiver of the debt in the amount of \$492.50. He states that his supervisors were unaware that there was a change in policy to prohibit *per diem* when the travel was less than 24 hours. He includes correspondence from his supervisors reflecting that they were unaware of change in policy to local travel of less than 24 hours.

Discussion

Under 5 U.S.C. § 5584, we have authority to waive repayment of erroneous payments of pay and certain allowances to federal employees if repayment 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 \$492.50 overpayment of *per diem* in this case involves erroneous payments for periods of local travel of less than 24 hours during two periods: August 15, 2015 through February 26, 2016; and March 10, 2016 through September 22, 2016. *Per diem* is the allowance for lodging (excluding taxes), meals, and incidental expenses. The temporary duty (TDY) cities the employee went to during these periods were within what was defined as the local area. The record reflects the local area was published to the offices on the installation. Although the government made a mistake in issuing the erroneous payments, waiver is not appropriate when a member has information at his disposal that if reviewed, would indicate an overpayment. *See* DOHA Claims Case No. 06111301 (November 15, 2006).

In addition, the DOHA adjudicator distinguished *per diem* from the employee's mileage expenses the employee incurred during this period and waived the overpayments associated with the mileage expenses. In the case of mileage expenses, the employee's means of travel were impacted and the adjudicator found those expenses incurred were used for their intended purpose.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision in DOHA Case No. 2019-WV-090604. 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
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
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