

DATE: April 23, 2020

In Re:)
 [REDACTED]) Claims Case No. 2019-WV-103110.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In order to be considered for waiver, a payment must be erroneous at the time it was made. Payments which are valid when made are not erroneous payments for the purpose of waiver under 5 U.S.C. § 5584.

DECISION

An employee of the Department of Defense requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-103110, dated February 20, 2020. In that decision, DOHA determined that \$1,039.57 could not be considered for waiver.

Background

Pursuant to the employee's February 2018 Permanent Change of Station (PCS) orders releasing him from his overseas assignment and reassigning him to an installation in the United States, he was paid all relocation expenses as part of his travel claim on November 18, 2018. The employee was advised by the Defense Finance and Accounting Service (DFAS) that there had been a change in the tax law and the taxes had not been withheld from his travel claim. When DFAS's pay system was updated to handle the change in the tax law, DFAS calculated the taxes owed by the employee on the travel claim and on December 30, 2018, DFAS paid the Internal Revenue Service (IRS) on his behalf the taxes owed. DFAS notified the employee of its action by letter in February 2019.

The employee requests waiver of the debt arguing that his PCS orders were not voluntary and that he moved at the direction of his higher headquarters as part of a new initiative mandate. He cites that the move was ordered despite his request to extend his job assignment overseas for an additional two years.

Discussion

Our authority in this case 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 have the authority to waive claims of erroneous overpayment of pay and 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. By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C. § 5584. If a payment is correct when made, we have no authority to relieve an employee of his obligation to repay the government. *See* DOHA Claims Case No. 2016-WV-090606.2 (March 30, 2017). Based on the facts in this record, the claim of the United States against the employee is not one "arising out of an erroneous payment of pay or allowances." *See* 5 U.S.C. § 5584(a). The employee was paid taxable entitlements as part of his PCS move back from an overseas job assignment. DFAS was obligated by law to collect taxes from the employee on this form of compensation. *See* 26 U.S.C. § 3402.

The employee's argument that this was an involuntary move and should not create a final debt for him was properly rejected by the DOHA adjudicator. The adjudicator correctly cited to the long standing precedent that the application of tax laws to an employee is a matter for the taxing jurisdiction. Therefore, we have no authority to consider the employee's tax debt for waiver. *See* DOHA Claims No. 03121101R (March 31, 2004); DOHA Claims Case No. 97060228 (August 18, 1997); and Comptroller General decision B-248948, Sept. 16, 1992.

Finally, the employee argues this withholding creates undue financial hardship. Financial hardship is not a factor for consideration in determining whether waiver is appropriate. *See* DOHA Claims Case No. 2011-WV-032105.2 (September 29, 2011). The employee may contact DFAS to request an adjustment in the amount he is required to repay monthly pursuant to a payment plan.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2019-WV-103110. 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
Member, Claims Appeals Board