

DATE: November 18, 2019

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2015-WV-071601.3
)
)

**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 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.

DECISION

A former employee of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-071601.2, dated September 12, 2019.

Background

The employee was employed as a security guard at an Air Force Station in Santa Clara County, California, from March 2003 until November 2010. In 2010 the Air Force Station closed and the employee was transferred to an Army Depot in Herlong, CA. Pursuant to his temporary change of station (TCS) move to Herlong in November 2010, the employee was entitled to receive a Relocation Income Tax Allowance (RITA).

The RITA's purpose is to provide a transferred employee enough money, in addition to relocation benefits, to pay all income taxes due on the benefits and the allowance itself. RITA is factored against a combined marginal tax rate (CMTR) which is a combination of federal, state and local tax rates. The RITA consists of two parts, a Withholding Tax Allowance (WTA) and a

RITA payment. The WTA is an estimated partial payment of the final RITA payment. The amount of withholding taxes is deducted from the RITA to arrive at the net payment to an employee. If the calculation of the RITA results in a negative amount, the employee is obligated to repay this amount as a debt due the government. WTA is paid based on an estimated or projected tax liability. The RITA payment is paid in the subsequent tax year after offsetting the WTA amount previously paid. *See generally* DOHA Claims Case No. 2012-WV-112612.2 (June 25, 2013) (discussing the purpose of RITA and the process for payment of it).

For each tax year, the employee was required to fill out a RITA Certification claim. For tax year 2011 the employee's WTA payment exceeded the amount he was entitled to receive in RITA, resulting in a debt in the amount of \$458.92. In December 2011 the employee was injured in an automobile accident while on duty. The Army conducted an investigation and placed the employee on administrative leave effective March 14, 2012. He was then discharged from his position on March 31, 2012. The record reflects that at the time of the employee's discharge, he was residing in the State of Nevada. On March 25, 2012, the employee submitted a RITA Certification claim for tax year 2011. However, the employee incorrectly filled out the form and mistakenly put the locality payment rate for San Francisco (35.15%) as the locality tax rate. As a result, the incorrect rate of 35.15% in the locality tax field resulted in an excessive CMTR of 49.9775%, when it should have been only 20.10%. As a result, the employee was overpaid RITA in the gross amount of \$3,736.62. Since the employee already owed a debt in the amount of \$458.92 for tax year 2011, his total debt to the government increased to \$4,195.54.

The employee requested waiver of the debt, and the Defense Finance and Accounting Service (DFAS) denied his request. On appeal, the employee maintained that he was given erroneous information on how to fill out his RITA Certification claim. The DOHA adjudicator upheld DFAS's denial of the employee's waiver request. The adjudicator examined the RITA Certification claim form and found that the employee should have realized that it was a mistake to list San Francisco as the locality tax rate since he was residing in Nevada. The adjudicator noted that the form specifically told him to list the locality where the employee incurred local income tax liability on the relocation reimbursements for tax year 2011.

In his request for reconsideration, the employee suggests that the amount of the debt is incorrect. He states that he is still repaying the debt. He also notes that the documents the adjudicator attached to her appeal decision are unrelated to his waiver request since he is not a female and did not work for the Air Force.

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 evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

The RITA Certification claim form specifically states that the employee list the locality where he incurred local income tax liability. Since the employee was residing in Nevada during the tax year 2011, he should have known that listing San Francisco on the form was incorrect. Therefore, under the circumstances we uphold the adjudicator's decision to deny waiver of the debt.

As for the amount of the debt and the balance the employee still has to repay, he should contact DFAS, since DFAS established the debt and is responsible for its collection. Finally, the documents attached and referred to in the adjudicator's appeal decision were cited as case precedent.

Conclusion

The employee's request for waiver relief is denied, and we affirm the appeal decision dated September 12, 2019. In accordance with DoD Instruction 1340.23 ¶ E8.15 (February 14, 2006), this is the final administrative action of the Department of Defense concerning the employee's request for waiver under 5 U.S.C. § 5584.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board