

KEYWORDS: Waiver of indebtedness, LWOP

DIGEST: When an employee on leave without pay (LWOP) receives a payment, she has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government.

CASE NO: 2019-WV-031107.2

DATE: 09/10/2019

DATE: September 10, 2019

In Re:)	
[REDACTED])	Claims Case No. 2019-WV-031107.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee on leave without pay (LWOP) receives a payment, she has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government.

DECISION

A former employee of the U.S. Army requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-031107, dated August 2, 2019. In that decision, DOHA followed the recommendation of the Defense Finance and Accounting Service (DFAS) and waived \$14.07 of the government’s claim against the employee, and denied waiver of \$1,703.20.

Background

Effective March 11, 2002, the employee was appointed to a position with the Army. Due to an administrative error, the employee’s code for her retirement plan was entered incorrectly into the pay system. As a result, incorrect deductions were withheld from her salary causing an overpayment of \$14.07 during the period March 11, 2002, through April 6, 2002.

During the period May 1, 2016, through May 14, 2016, the employee was in a leave without pay (LWOP) status for 14 days. In that status, the employee was erroneously paid \$1,703.20 for 80 hours of salary.

The DOHA adjudicator waived the overpayment of \$14.07. The adjudicator denied waiver of the overpayment of \$1,703.20 the employee received while in a LWOP status because the employee should have been aware that she was not entitled to the payments. Therefore, she should have held the overpayment for the eventual repayment to the government. In response to the employee's assertion on her waiver application that she was ill at the time of the overpayment and her husband was taking care of her finances, the adjudicator explained that in the absence of medical documentation reflecting her diminished cognitive abilities during the period of overpayment, she had a duty monitor her bank account, verify her statements and question any discrepancies.

In her reconsideration request, the employee states that she acted in good faith and immediately contacted her time-keeper in May 2016 so that she would not continue to be overpaid. She states that she provided a letter from her doctor to DFAS reflecting her medical condition. She objects to DFAS's calculation of the overpayment because it includes premiums she paid for health insurance. She states that she did not have federal health insurance in May 2016 because her health care was provided by the U.S. Department of Veterans Affairs (VA). She further states that she submitted her waiver request to DFAS in September 2016, but it took DFAS three years to send it to DOHA. She contends that DFAS has fraudulently collected money from her and discriminated against her in retaliation for her requesting assistance from her congressman's office. She requests all documentation DFAS provided to DOHA in the adjudication of her waiver case.

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. *See* DoD Instruction 1340.23 (February 14, 2006) (Instruction) ¶ E4.1.2. Under the terms of the waiver statute and our implementing regulations, the appropriateness of waiver turns on the knowledge and conduct of the employee who received the erroneous payments, rather than the actions of the agency making the payments. Thus, the fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4.

The employee acknowledges in her reconsideration request that she knew she was not entitled to receive salary payments while she was in a LWOP status. She immediately contacted the appropriate official after receiving the overpayments in May 2016 so that she would not continue to be overpaid. Although the employee acted properly in contacting the proper authority, waiver is precluded because she was aware that she was being overpaid. Under the circumstances, she did not acquire title to the money and had a duty to hold the money for eventual repayment. *See* DOHA Claims Case No. 01092001 (October 29, 2001); and DOHA Claims Case No. 97031009 (July 18, 1997).

We appreciate the employee's frustration with the time it has taken to adjudicate her waiver request. She should contact DFAS for the documentation used to adjudicate her waiver case. Further, since DFAS has the sole authority over the establishment and calculation of the debt, the employee should contact them concerning the payment of premiums for her health insurance.

Conclusion

The employee's request for reconsideration is denied, and we affirm the decision of August 2, 2019. In accordance with the Instruction ¶ E8.15, this is the final administrative decision 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: Ray T. Blank, Jr.

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