

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.

KEYWORDS: Waiver of Indebtedness

CLAIM NO: 2016-WV-030702.2

DATE: 01/19/2018

DATE: January 19, 2018

In Re:)	
[REDACTED])	Claims Case No. 2016-WV-030702.2
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 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 decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2016-WV-030702.

Background

During the period December 2003 through October 2011 the employee received erroneous salary payments for 632 hours he did not work because he was performing active duty in the military. The Defense Finance and Accounting Service (DFAS) determined that the

overpayment resulted from the employee's fraudulent submission of time and attendance documents.

The DOHA adjudicator sustained DFAS's denial of the employee's request for waiver of the debt. The adjudicator found that the employee should have known that he was overpaid. Specifically, the adjudicator noted that the employee was responsible for inputting pay for soldiers performing military duty. In addition, the employee had previously used military leave while performing duty away from his civilian position.

In his reconsideration request, the employee continues to argue that he should not be held responsible for a debt that occurred over ten years ago. He states that there was no way that he could have gotten away with knowingly submitting fraudulent time and attendance documentation. He states that there was always someone from the Civilian Pay Office who would contact you if documentation was submitted and you were on active military duty. He also states that the charges alleged against him were dismissed.

Discussion

The employee seeks waiver of the debt under 5 U.S.C. § 5584. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. Under the terms used in the statute and implementing regulations, the appropriateness for waiver turns on the knowledge and conduct of the employee who received the erroneous payments. The principal test is whether the employee knew or reasonably should have known that an erroneous payment occurred and failed to bring the matter to the attention of the proper officials. The standard employed to determine whether an employee was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person should have known or suspected that he was receiving erroneous payments. *See* DOHA Claims Case No. 2012-WV-082016.2 (March 19, 2013); and DOHA Claims Case No. 97052111 (September 30, 1997). We have consistently held that when a member provides questionable, incorrect, false or fictitious information to agency officials which directly results in an overpayment, he is not free from fault in the accrual of the debt, and waiver is not appropriate. *See* DOHA Claims Case No. 2012-WV-082016.2, *supra*; and DOHA Claims Case No. 2012-WV-061201.2 (October 25, 2012).

Although the charges may have been dismissed by the employee's command, as pointed out by the adjudicator in the appeal decision, one of the employee's responsibilities in his civilian position with the Army was to input pay for soldiers performing military duty. Further, the employee had previously taken military leave while performing active duty away from his civilian position. Therefore, the employee should have recognized that he was not entitled to receive his civilian salary while performing active duty in the military.

An agency's establishment of a debt against an employee is an agency's decision and a matter primarily for administrative determination, and we have no authority over that

administrative process. Although we recognize the delay in the agency's establishment and processing of the employee's debt, this is not a basis for waiver approval. *See* DOHA Claims Case No. 97090809 (September 23, 1997). Waiver is precluded because the employee was aware or should have been aware he was being overpaid.

Conclusion

The employee's request for relief is denied, and we affirm the December 8, 2017, decision to deny waiver. In accordance with Instruction ¶ 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: Ray T. Blank, Jr.

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