

KEYWORDS: waiver of indebtedness

DIGEST: Waiver is not appropriate when an employee knows, or reasonably should know, that a payment was erroneous. The recipient has a duty to set aside the funds for eventual repayment to the government

CASENO: 2017-WV-111405.2

DATE: 07/16/2018

DATE: July 16, 2018

In Re:)	
[REDACTED])	Claims Case No. 2017-WV-111405.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate when an employee knows, or reasonably should know, that a payment was erroneous. The recipient has a duty to set aside the funds for eventual repayment to the government.

DECISION

A former employee of the U.S. Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-111405, dated June 7, 2018. In that decision, DOHA denied waiver of overpayment of an erroneous salary payment in the amount of \$18,694.40.

Background

On September 10, 2015, the employee transferred from the Navy to the Department of State. Due to an administrative error, the employee erroneously continued to receive salary payments from the Navy from September 20, 2015, through November 14, 2015, causing an overpayment in the gross amount of \$18,694.40.¹ The DOHA adjudicator considered the employee's argument that the overpayments resulted from an administrative error and he was not aware of the erroneous payments until late October when he reviewed his bank records. The adjudicator concluded that the employee had a duty to monitor his bank accounts and report any discrepancies. The adjudicator found that if the employee had reviewed his bank statements in early October 2015 subsequent to his transfer, he would have noticed the erroneous payments. The adjudicator also explained that DOHA had no jurisdiction over his concern with any adjustments subsequently made to his tax-deferred Thrift Savings Plan (TSP).

In his request for reconsideration, the employee states that he has suffered financial harm from the purposeful and unmanaged withdrawal of funds from his TSP at the end of calendar year 2015. He takes note of the adjudicator's citation of the waiver statute, regulations, and case precedent. He asserts that the cited authority fails to address the harm that he has endured. He suggests partial waiver of his debt in order to achieve a "win-win" in the resolution of the matter.

Discussion

This case is before our office under the authority of 5 U.S.C. § 5584. That statute provides authority for waiving claims for 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. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. In adjudicating waiver cases, DOHA is bound by statute, regulation, and applicable case precedent.

In the present case, the erroneous payments were made as a result of administrative error and there is no indication of fraud, misrepresentation or lack of good faith on the employee's part in that regard. However, the employee states that he was aware of the erroneous payments when he reviewed his credit union account statements in late October 2015. An employee who receives erroneous payments from the government does not acquire title to money and has a duty to return the money when asked to do so. When an employee knows, or reasonably should know that he is receiving pay to which he is not entitled, he has a duty to retain such amounts for refund to the government. *See* DOHA Claims Case No. 2013-WV-030508.2 (September 17, 2013); DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011); and DOHA Claims Case No. 02030503 (March 14, 2002).² In addition, there is no basis for apportioning fault under the

¹The employee erroneously received salary for four pay periods from the Navy after his transfer. He received 80 hours of salary in the amount of \$4,673.60 for each of the four pay periods during the period of overpayment for a total of \$18,694.40.

²All three of the waiver cases cited above are factually analogous to the employee's case in that all involved employees who terminated their employment with one agency within DoD to be reassigned to another agency, but erroneously continued to receive their salary from their former employer.

waiver statute. An employee derives no entitlement to an erroneous payment of pay or allowances because the government makes a mistake. *See* DOHA Claims Case No. 00081602 (November 22, 2000).

As for the employee's concerns about his taxes and TSP, he should contact the Internal Revenue Service (IRS) for information concerning adjustments to his tax liability as the result of making repayment of the overpayments he received. *Id.* at 2.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision dated June 7, 2018. In accordance with the Department of Defense 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: Ray T. Blank, Jr.

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

