

DATE: January 11, 2018

In Re:)

[REDACTED])

) Claims Case No. 2017-WV-022302.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee is aware that he is receiving salary in excess of his entitlement, he does not acquire title to the excess amount and has a duty to retain the excess for eventual repayment to the government.

DECISION

A former employee of the Department of Defense (DoD) requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-022302, dated October 30, 2017. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying the employee's request that the government waive the \$4,737.59 debt he incurred as a result of the erroneous payment of salary.

Background

On August 22, 2015, the employee separated from his employment with DoD and was appointed to the General Services Administration (GSA) on August 23, 2015. As a result, he was no longer entitled to receive salary from DoD. However, due to an administrative error, he erroneously continued to receive salary from DoD during the pay period ending (PPE) September 5, 2015, through the PPE September 15, 2015, in the amount of \$4,737.59.

DFAS initially denied the employee's request for waiver because he acknowledged that he was aware he was receiving erroneous salary payments. Specifically, the employee stated on his DD Form 2789, *Waiver/Remission of Indebtedness Application*, that he received his first

erroneous DoD paycheck on September 11, 2015, after he discovered that it had been deposited into his bank account. He immediately notified DoD of the overpayment. He also attached emails demonstrating his efforts to do everything in his power to correct the error. In the employee's appeal of DFAS's denial of his waiver request, he stated that he did not definitely know that the payments were erroneous until he received a notification of indebtedness from DFAS in December 2015. He stated that there were several reasons that he was not sure the payments he received were erroneous. He stated that the payments were not the normal amounts he received for DoD salary; he thought that the payments may have been made to him for an award; and he also believed they may have been made to him as a result of a recent permanent change of station (PCS).

The DOHA adjudicator upheld DFAS's denial of the employee's request for waiver because the employee initially acknowledged he knew he was being overpaid. In addition, the adjudicator found no evidence that the employee was notified that he was entitled to receive the payments, such as documentation from his Human Resources Office reflecting his entitlement to any awards or documentation concerning any further reimbursement for his PCS expenses.

In his reconsideration request, the employee states that while he did not receive confirmation that he was entitled to the payments, he also did not receive confirmation that he was not entitled to the payments until he was officially notified by DFAS in December 2015. He attaches his bank statements from March 2015 through September 2015 to show that on at least four occasions, his PCS entitlements were included with his normal salary.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interests of the United States. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). In relevant part, generally, persons who erroneously receive a payment from the government acquire no right to it and are bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. Waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. A waiver is usually inappropriate when a recipient knows, or reasonably should know, that a payment is erroneous. In such instances, the recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

In the present case, the employee acknowledged in his original waiver request that he knew he was overpaid in September 2015 and immediately notified the appropriate officials by email. The employee now contends that he was expecting further payment for his PCS, and did not realize he was being overpaid. However, the emails provided by the employee show that he notified DoD on September 11, 2015, that he had received a DoD paycheck even though he had accepted and reported to a new job with the GSA on August 24, 2015. In response, a DoD

official advised the employee that the personnel system still reflected he was as an employee. The employee continued to pursue the matter to correct the situation. Although the employee now states that, at the time of the overpayment, he believed he may have been entitled to further reimbursement for PCS expenses, this does not change the fact that he should have held the questionable payments until he received a definite determination of his entitlement to them. As explained by the adjudicator, there is nothing in the record to support the employee's belief that the payments he received were for additional reimbursement of his PCS. Under the circumstances, the employee did not acquire title to the overpayments and waiver is not appropriate. *See* DOHA Claims Case No. 2011-WV-092801.2 (December 29, 2011); DOHA Claims Case No. 2010-WV-113001.2 (May 3, 2011); and DOHA Claims Case No. 08082201 (August 28, 2008).

Conclusion

The employee's request for relief is denied, and we affirm the DOHA appeal 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