

KEYWORDS: Pay and Allowances, indebtedness, SPP, Standby Premium Pay

DIGEST: Under 5 U.S.C. § 5584, waiver is not appropriate when an employee receives a significant, unexplained erroneous payment of pay or allowances. In such a case, the employee derives no entitlement to the erroneous payment because the government makes a mistake, and has a duty to ascertain the reason for the payment and to set aside the funds for eventual repayment to the government.

CASENO: 2018-WV-013007.2

DATE: 11/29/2018

DATE: November 29, 2018

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2018-WV-013007.2
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 5 U.S.C. § 5584, waiver is not appropriate when an employee receives a significant, unexplained erroneous payment of pay or allowances. In such a case, the employee derives no entitlement to the erroneous payment because the government makes a mistake, and has a duty to ascertain the reason for the payment and to set aside the funds for eventual repayment to the government.

**DECISION**

An employee of the U.S. Army requests reconsideration of the September 12, 2018 appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-013007. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the employee’s debt totaling \$24,627.04 due to the erroneous payment of standby premium pay (SPP).

## **Background**

The employee was erroneously paid \$24,627.04 in SPP for the period October 7, 2012, through January 21, 2017. The employee's personnel office mistakenly initiated SPP for him effective October 7, 2012, when the premium pay was intended for another employee by the same name. As a result, the employee began receiving SPP in the monthly amount of \$217.60 beginning in the pay period ending (PPE) November 3, 2012. In addition, during that same pay period, the employee was paid a retroactive payment in the amount of \$217.60, which represented SPP for the period October 7, 2012, through October 20, 2012. The erroneous payments of SPP were reflected on the employee's leave and earning statements (LES), until the error was discovered in January 2017.

In his reconsideration request, the employee states that it is unfair to hold him liable for the debt because he did not cause the error. He states that the individual who authorized the increase in his pay should be held at fault in the matter. In addition, he states that he reasonably expected an increase in his pay around the same time the overpayments started because he received a step increase in October 2012. He states that he apparently missed reviewing the first LES reflecting the payment of the SPP. He contends that over the next four years he had no reason to suspect an error because the SPP continued to be reflected on his LES even after receiving six more wage-related increases.

## **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Waiver under 5 U.S.C. § 5584 does not apply automatically to relieve the debts of all employees who, through no fault of their own, receive an erroneous payment from the government. The fact that an erroneous payment is solely the result of 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. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5.

In this case, the employee had almost twelve years of federal service at the time the error started, and was in receipt of a monthly LES during the entire period of overpayment. A review of his LES reflects that the additional SPP payment of \$217.60 was a separate and

distinct payment from the employee's regular pay. Therefore, beginning in November 2012 when he received his LES, he should have immediately questioned the unexplained payment of SPP on his LES, especially since he received no documentation authorizing him payment of SPP. Although the employee was expecting an increase in salary due to his step increase around the same time, he should have known that the payment of SPP was not associated with it or any other step increases he subsequently may have received. The fact that the SPP continued to be reflected on his LES even after receiving pay increases in no way militates against a finding that waiver is not appropriate in this case. If the employee had brought the matter to the attention of the appropriate officials, the error could have been corrected, and its correction presumably would have prevented the continuation of the overpayment. Since the employee failed to do so, waiver is not appropriate. *See* DOHA Claims Case No. 06112735 (December 6, 2006).

### **Conclusion**

The employee's request for relief is denied, and we affirm the September 12, 2018, appeal decision. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Ray T. Blank Jr.

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Ray T. Blank Jr.  
Member, Claims Appeals Board