

KEYWORDS: Pay and allowance, waiver of indebtedness

DIGEST: A waiver is generally not appropriate when a recipient of a significant unexplained increase in pay or allowances, or 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.

CASENO: 2018-WV-031601.2

DATE: 09/20/2018

DATE: September 20, 2018

)	
In Re:)	
[REDACTED])	Claims Case No. 2018-WV-031601.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver is generally not appropriate when a recipient of a significant unexplained increase in pay or allowances, or 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.

DECISION

An employee of the U.S. Air Force requests reconsideration of the July 16, 2018, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-031601. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of an overpayment of basic salary in the amount of \$7,357.60.

Background

The employee, an Air Traffic Control Specialist, was in proper receipt of his salary in the amount of \$77,524.00 per annum, which included Air Traffic Controller (ATC) Premium Pay for the periods when he missed meals as a result of his ATC duties. On June 27, 2013, the employee received a tentative offer for a position overseas as a Diplomatic Clearance Specialist with an annual salary of \$62,019.00. On that same date, the employee accepted the offer for the position. On October 18, 2013, a *Notification of Personnel Action*, SF-50, was issued granting him a reassignment from his position as an ATC (annual salary of \$77,524.00) to a Diplomatic Clearance Specialist (annual salary of \$62,019.00). As a result of his reassignment, the employee was no longer entitled to receive ATC Premium Pay. However, due to an administrative error, for some unknown reason, the employee began receiving Administrative Uncontrollable Overtime (AUO). As a result, during the pay period ending (PPE) November 2, 2013, through February 6, 2016, the employee erroneously received \$7,357.60 in AUO.

On July 16, 2018, in DOHA Claim No. 2018-WV-031601, the adjudicator denied the employee's appeal of DFAS's denial of his waiver request. The adjudicator found that although the employee stated he did not become aware of the erroneous payments until May 2015 when he received an email from his Human Resources Office, there was no indication in the record that he questioned the unexplained payments of AUO he began receiving in the PPE November 2, 2013. Given the fact that the employee received leave and earnings statements (LESs) during the period of overpayment that reflected the AUO, and had never received AUO before, the adjudicator found that he should have at least questioned why he inexplicably began receiving it.

In his request for reconsideration, the employee alleges error in the adjudicator's finding that the ATC Premium Pay was properly removed from his salary. He states that it was not properly removed which prompted his Human Resources Specialist to contact him by email in May 2015. Although he acknowledges receipt of the SF-50 dated October 18, 2013, changing his annual salary from \$77,524.00 to \$62,019.00 upon reassignment, he continues to express concern about DFAS's initial decision stating that the SF-50 was dated October 21, 2015. He also states that there was nothing on his LESs upon his reassignment overseas that would have alerted him to an error in his pay. Finally, he contends that he was not given adequate due process before DFAS started collection of his debt by deduction from his salary beginning in the PPE April 2, 2016.

Discussion

As the adjudicator advised the employee in her appeal decision, 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 erroneous payments from the government. Debts are waived only when collection would be against equity and good conscience and not in the best interests of the United States. *See* DoD Instruction 1340.23 (February 14, 2006) (Instruction) ¶ E4.1.2. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or 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, there is no record evidence from the employee offering a plausible explanation and supporting documentation that demonstrates why he reasonably expected payment of AUO. The employee received an offer letter and an SF-50 stating that his salary was \$62,019.00 per annum, with no indication that he was entitled to receive AUO. In addition, the employee acknowledges he was no longer entitled to receive ATC Premium Pay upon his reassignment to the position of Diplomatic Clearance Specialist. Therefore, when his LESs reflected payments for AUO, he should have questioned why he was receiving it, especially since he had never received AUO before, and none of the personnel paperwork referenced any form of premium pay being authorized for the new position. *See* DOHA Claims Case No. 2014-WV-072405.2 (September 15, 2015); DOHA Claims Case No. 09010501 (January 8, 2009); DOHA Claims Case No. 06112735 (December 6, 2006); and DOHA Claims Case No. 97012135 (June 13, 1997).

Additionally, after being notified in May 2015 of the overpayments the employee was on notice that there was an error in his pay. The employee on June 3, 2015, sent an email in response to the May notification informing the Personnel Center he had not been contacted by DFAS, nor had the overpayment stopped. He also received a follow-up email from his Personnel Center on June 16, 2015, informing him the premium pay had been removed from his salary. He had similar exchanges with his Personnel Center in July 2015, where again he restated he not been contacted by DFAS nor had the overpayment stopped. During this specific period until the issue was resolved, the employee should have set aside these AUO payments until his entitlement to them was determined. *See* DOHA Claims Case No. 07102205 (October 25, 2007); and DOHA Claims Case No. 97012135, *supra*.

As for the employee's concerns about DFAS beginning collection from his salary in April 2016, he should contact DFAS since DOHA has no authority over the collection of debts.

Conclusion

The employee's request for relief is denied, and we affirm the July 16, 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

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