

KEYWORDS: waiver of indebtedness

DIGEST: In order for an employee’s debt to be considered for waiver under 5 U.S.C. § 5584, it must have resulted from the erroneous payment of pay or allowances

CASENO: 2018-WV-020607.2

DATE: 06/26/2018

DATE: June 26, 2018

	)		)		)		)		)
In Re:									
Alexander Zemek						Claims Case No.		2018-WV-020607.2	
Claimant									

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

In order for an employee’s debt to be considered for waiver under 5 U.S.C. § 5584, it must have resulted from the erroneous payment of pay or allowances.

**DECISION**

A former employee of the Department of Defense requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-020607, dated May 18, 2018. In that decision, DOHA sustained the determination of the Defense Finance and Accounting Service (DFAS) that the government’s claim for \$3,355.25 is not an erroneous payment and cannot be considered for waiver under 5 U.S.C. § 5584.

**Background**

On June 12, 2014, the employee signed a Continued Service Agreement (CSA). In return for training at his employing agency’s expense, the employee agreed to remain in service with his agency for the period of 33 months from December 2015 through September 2018. However, on September 5, 2016, the employee resigned from his employment prior to the completion of his obligated service under the CSA. As a result, the employee was required to repay training expenses in the amount of \$3,355.25.

The DOHA adjudicator determined that the \$3,355.25 could not be considered for waiver. The adjudicator explained that since the payments made by the agency on the employee's behalf for training were correct when paid, regardless of subsequent events, DOHA had no authority to relieve the employee of his obligation to repay the government. The adjudicator referred the employee to his employing agency and the Office of Personnel Management (OPM) for answering his concerns about the establishment of his debt and the process for disputing its validity.

In his request for reconsideration, the employee states that the government erroneously collected over \$3,000.00 from his salary on September 9, 2016. He states that his agency erred prior to collection by referring to it as "erroneous temporary duty payments." He states that a CSA was not required to be implemented for his training because the length of it was relatively short. Finally, he states that he contacted OPM as advised by the DOHA adjudicator but was told that DFAS should address his concerns.

### **Discussion**

In this case, waiver under 5 U.S.C. § 5584 is not an available remedy to the employee. Based on the facts in the record, the government's claim against the employee is not one "arising out of an erroneous payment of pay or allowances." *See* 5 U.S.C. § 5584(a). The debt here did not arise from "pay or allowances" as the term is used under 5 U.S.C. 5584(a) because educational/training expenses are not considered pay or allowances. *See* DOHA Claims Case No. 2010-WV-042701.2 (August 12, 2010); and DOHA Claims Case No. 2009-WV-072004.2 (October 29, 2009).<sup>1</sup> Moreover, if the payments were valid when made, we have no authority to relieve an employee of his obligation to repay the government. In this case, the employee signed a CSA. He acknowledged in the agreement that if he voluntarily left the agency before completion of his obligated period of service, he would reimburse the agency for training expenses. The resulting debt did not result from an erroneous payment of pay or allowances; rather it arose from the employee's breach of the CSA. *See* DOHA Claims Case No. 2011-WV-081602.2 (December 15, 2011); DOHA Claims Case No. 2010-WV-122201.2 (July 8, 2011); DOHA Claims Case NO. 08052701 (May 30, 2008); and Comptroller General decision B-230338, June 21, 1988.

Although we have no authority to waive the amount of the agency's right to recover from the employee under 5 U.S.C. § 5584, we note that under 5 U.S.C. § 4108(c), the head of the agency concerned may waive in whole or in part a right of recovery if it is shown that the recovery would be against equity and good conscience or against the public interest. *See* B-238725, Aug. 14, 1990; and B-233734, May 30, 1989. Pursuant to this statute, OPM promulgated regulations in part 410 of title 5, Code of Federal Regulations (CFR). The implementing regulation for 5 U.S.C. § 4108(c) is set forth under 5 C.F.R. 410.309, which states:

---

<sup>1</sup>These cases were decided under 10 U.S.C. § 2774 because the applicants for waiver were military members. However, the standards for waiver under 5 U.S.C. § 5584 and 10 U.S.C. § 2774 are the same.

Failure to fulfill agreements. With a signed agreement, the agency has a right to recover training costs, except pay or other compensation, if the employee voluntarily separates from Government service. The agency shall provide procedures to enable the employee to obtain a reconsideration of the recovery amount or to appeal for a waiver of the agency's right to recover.

This section of the CFR was cited in the employee's CSA, and the employee was advised to see his supervisor for more information on the internal policies of the agency in implementing the agreement. Possibly, the agency's regulations may contain more information on the process for applying for a reconsideration of the recovery amount or an appeal for waiver of the agency's right to recover. We note that ¶ 030212(C)(3), Collection Employee Training Expenses, of Chapter 3, Volume 16, of the DoD Financial Management Regulation (DoDFMR) states that an employing activity must give the employee the opportunity to request a reconsideration of the amount to be recovered or to apply for a waiver of the activity's right to recover. Therefore, under 5 U.S.C. § 4108, and implementing regulations, the discretionary authority to waive repayment of training expenses rests with the employing agency.

The employee continues to contest the validity of the debt because he contends the CSA was not required for his training. If the employee wishes to contest the validity of the debt by disputing it and proving his entitlement to the payment, he should direct his contention to DFAS. Generally, an appeal of a decision by DFAS on his entitlement would be directed to OPM under 31 U.S.C. § 3702(a)(2).

### **Conclusion**

The employee's request for reconsideration is denied, and we affirm the appeal decision dated May 18, 2018. In accordance with DoD Instruction ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee's request for waiver under 5 U.S.C. § 5584.

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

