

Background

On April 29, 2015, the employee executed a *Service Agreement for Payment of a Recruitment Incentive*, entitling him to a recruitment incentive in the amount of \$38,349.00.¹ In the agreement, the employee agreed to serve in his agency in his position as a Manager in Human Resources for three years. The employee agreed that if he failed to fulfill the terms of the agreement, he would be required to repay a *pro rata* portion attributed to any period of uncompleted service.

On March 28, 2016, the employee left his position to accept an appointment with another agency outside of the Department of Defense. As a result, the employee was required to reimburse the government for the amount of the recruitment incentive he received in excess of the amount that was attributable to the completed portion of the service period set forth under the agreement. This amount was determined to be \$25,122.79.

In the appeal decision, the DOHA adjudicator determined that the debt could not be considered for waiver because no erroneous payment was made. In his request for reconsideration, the employee states that the amount of recruitment incentive paid to him was incorrect because the calculation of the amount violated federal law under 5 U.S.C. § 5753 and 5 C.F.R. § 575.209. Therefore, he contends that he was paid erroneously, and DFAS and DOHA have jurisdiction to waive his debt under 5 U.S.C. § 5584.

Discussion

Under the applicable statute, 5 U.S.C. § 5753, recruitment incentives are payable to certain qualified employees who enter into written service agreements to complete a period of employment with the agency. Any agreement under the statute shall specify, subject to regulations as the Office of Personnel Management (OPM) may prescribe, the terms under which the agreement may be terminated and the effect of the termination. Therefore, an employee's entitlement to such payments is subject to these statutory provisions, applicable regulations and the provisions of the written agreement. *See generally* paragraph 030601 of Volume 8 of DoD 7000.14R, DoD Financial Management Regulation (DoDFMR), Civilian Pay Policy and Procedures; and Payment of Recruitment Incentives, 5 C.F.R. § 575.109.

Our authority in this case is limited to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we have the authority to waive the government's claims for repayment of 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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee. By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C. § 5584. If the payment was correct when made, we have no authority to relieve an employee of his obligation to repay the government, regardless of subsequent events. Based on the facts in this case, the claim of the United States against the employee is not one "arising out of an erroneous payment of pay or allowances." *See* 5 U.S.C. § 5584(a). Therefore, the statutory

¹The employee received the lump sum payment of \$38,349.00 in pay period ending (PPE) June 27, 2015.

precondition for waiver is not satisfied. *See* DOHA Claims Case No. 2012-WV-070602.2 (October 25, 2012); and DOHA Claims Case No. 2011-WV-081602.2 (December 15, 2011).

The employee contends that the calculation of the payment of the recruitment incentive violated federal law and resulted in an erroneous payment paid to him. First, the employee cites to the CFR for relocation incentives, not for recruitment incentives. The section on recruitment incentives is found at 5 C.F.R. § 575.109. In addition, the DoDFMR section cited above provides agency regulations on the payment of recruitment incentives. Second, under these regulations, the agency has the discretion on the method of payment for the incentive, with OPM having the authority to waive certain pay limitations. Under our waiver authority, DOHA has no authority to question the method or calculation of payment of the recruitment incentive. Third, even if we could consider the debt for waiver, waiver would not be appropriate under the circumstances of this case. By signing the agreement, the employee was on notice that if he did not fulfill the terms of the agreement, he would be required to repay a prorated amount attributable to any uncompleted service. Finally, DFAS made the determination that the employee is legally obligated to refund the \$25,122.79. We have no authority to question DFAS's determination. In this regard, the establishment of a debt amount is primarily for administrative determination, and our office will not question an agency's determination, especially in cases where the resulting debt is not eligible for waiver consideration. As explained in the appeal decision by the adjudicator, the employee should address this matter to the proper authorities. Therefore, if the employee wishes to contest the validity of the debt by disputing it and proving his entitlement, he should direct his contention to the Navy and DFAS. Generally, an appeal of a decision by the Navy and DFAS on his entitlement would be directed to OPM under 31 U.S.C. § 3702(a)(2).

Conclusion

The employee's request for relief is denied, and we affirm the August 13, 2018, appeal decision. In accordance with DoD Instruction 1340.23 ¶ 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