

KEYWORDS: Pay and Allowances, NDAA

DIGEST: Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim 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 interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

CASENO: 2018-WV-020201.2

DATE: 12/18/2018

DATE: December 18, 2018

)	
In Re:)	
[REDACTED])	Claims Case No. 2018-WV-020201.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim 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 interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

DECISION

An employee of the Air National Guard requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-020201, dated September 24, 2018. In that decision, DOHA declined to follow the recommendation of the Defense Finance Accounting Service (DFAS) to waive the employee’s debt in full.

Background

The employee is a member of the Air National Guard and performs the duties as a military technician (dual status) as defined in section 10216(a) of Title 10. The employee claimed 30 hours of military leave and 20 hours of holiday leave for the period December 25, 2016 through January 7, 2017. However, the National Defense Authorization Act (NDAA) of Fiscal Year 2017, effective December 23, 2016, contained a provision amending the law to prohibit dual status employees from claiming military leave while also in an active Guard/Reserve (AGR) status. The employee received his civilian salary in the amount of \$2,990.00 for the period he took military leave on January 13, 2017. On that same date, the employee received an email from his Human Resources Office notifying him of the change in the law. In early February 2017 the employee was advised by his finance office that since he had taken military leave after the change in the law on December 23, 2016, he had to adjust his leave in the Automated Time Attendance and Production System (ATAAPS) to remove the military leave. After the adjustment was made in ATAAPS, a debt was then generated against the employee on March 3, 2017, for the civilian salary he received for the pay period ending January 7, 2017, in the amount of \$2,990.00. On May 13, 2017, the employee received a notification of indebtedness from DFAS. On May 18, 2017, the employee requested a hearing on the validity of the debt. On May 24, 2017, DFAS determined that the debt was valid and advised the member that he could seek waiver of the debt under 5 U.S.C. § 5584.

The employee subsequently requested waiver of the indebtedness with DFAS. Under the waiver statute, DFAS determined that the employee was not at fault in the matter and acted in good faith in accepting the overpayment of civilian salary in the amount \$2,990.00. Therefore, DFAS forwarded the employee's case file to DOHA with the recommendation that DOHA waive the employee's debt in full.¹

Although the DOHA adjudicator did not find the employee at fault for the accrual of the debt, she declined to follow the recommendation of DFAS to waive the debt. She reasoned that since the employee was notified of the change in the law on June 13, 2017, at the same time he received his civilian salary, waiver was not appropriate under the doctrine of prompt notification of a debt.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay or allowances to DoD employees if collection would be against equity and good conscience and not in the best interests of the United States, and there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Our decisions and

¹Since the employee's debt exceeded \$1,500.00, DFAS was required under statute and regulation to forward the employee's request for waiver to DOHA for adjudication. *See* 5 U.S.C. § 5584(a)(1); and DoD Instruction 1340.23 (February 14, 2006) ¶ E7.1.

those of the Comptroller General indicate that collection is not against equity and good conscience when the employee is promptly notified of the erroneous payment.

In this case, we agree that the employee was not at fault in the accrual of the debt. However, since the employee had no indication of the possibility of a debt for his civilian salary until February 2017 when he adjusted his military leave and the actual establishment of his debt did not occur until March 2017, the doctrine of prompt notification of a debt is not applicable to the facts in this case. Therefore, we find the employee acted in good faith in the matter and collection of the overpayment would be against equity and good conscience.

Conclusion

The employee's request for waiver is hereby granted in the amount of \$2,990.00. In accordance with DoD Instruction 1340.23 ¶ 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

