

DATE: March 30, 2017

_____))
In Re:))
 [REDACTED]) Claims Case No. 2016-WV-090606.2
))
Claimant _____))

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In order to be considered for waiver, a payment must be erroneous at the time it was made. Payments which are valid when made are not erroneous payments for the purpose of waiver under 5 U.S.C. § 5584.

DECISION

An employee of the U.S. Army requests reconsideration of the January 12, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-090606. In that decision, DOHA determined that \$5,004.49 could not be considered for waiver.

Background

Pursuant to the employee's permanent change of station (PCS) move, he was paid a total of \$10,634.54 for Withholding Tax Allowance (WTA) in 2013. This amount was calculated by multiplying the covered taxable reimbursement of \$31,903.61 by the estimated tax rate of 25 percent. In a subsequent claim for payment of Relocation Income Tax Allowance (RITA), the Defense Finance and Accounting Service (DFAS) determined that the employee's actual tax rate was 15 percent. Therefore, the employee was only entitled to receive \$5,630.05 (\$10,634.54 x 15 percent). WTA is paid based on an estimated or projected tax liability. The RITA payment is paid in the subsequent tax year after offsetting the WTA amount previously paid. *See* 41 C.F.R. §§ 302-17.1 through 17.32. Since the employee was paid WTA in the amount of \$10,634.54, but was only entitled to receive \$5,630.05, he was overpaid \$5,004.49.

In his reconsideration request, the employee contends that the payment of the WTA was erroneous and should be considered for waiver under 5 U.S.C. § 5584. He states that the error occurred in the computation of his WTA when it was assessed using 25 percent, instead of 15 percent. He further states that DOHA erred in applying the travel regulations concerning advance payments to the WTA overpayment.

Discussion

The RITA's purpose is to provide a transferred employee enough money, in addition to relocation benefits, to pay all income taxes due on the benefits and the allowance itself. *See* 5 U.S.C. § 5724b; 41 C.F.R. 302-17.2; and the DoD Financial Management Regulation (DoDFMR), paragraph 0612 of Volume 9, Chapter 6, Permanent Duty Travel. The RITA consists of two parts, a WTA and a RITA. The WTA is an estimated partial payment of the final RITA payment. The amount of withholding taxes is deducted from the RITA to arrive at the net payment to an employee. If the calculation of the RITA results in a negative amount, the employee is obligated to repay this amount as a debt due the government. *See* DoDFMR ¶ 061201, Vol. 9, Ch. 6.

Our authority in this case is restricted 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 claims of erroneous overpayment of pay and allowances if collection would be against equity and good conscience and not in the best interests 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 a payment is correct when made, we have no authority to relieve an employee of his obligation to repay the government. Based the facts in this record, 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). The employee was paid WTA based on his estimated tax liability. When the RITA calculation resulted in a negative amount, the employee was obligated to repay this amount. Therefore, we have no authority to consider the employee's debt for waiver. *See* DOHA Claims Case No. 2012-WV-112612.2 (June 25, 2013); and DOHA Claims Case No. 97060228 (August 18, 1997).

The employee contends that the adjudicator was erroneously applying the travel regulations to the payment of WTA. However, in the appeal decision, the adjudicator compared the payment of WTA and RITA to the situation where an employee receives a travel advance. Travel advances are not meant to be final payments but are estimates to be reconciled against actual, authorized expenses. As referenced above, the DoDFMR, not the Joint Travel Regulations, specifically states that an employee must repay any excess WTA paid in year one, and provides the formula to calculate the WTA and payments to the employee.

Conclusion

The employee's request for waiver relief is denied, and we affirm the January 12, 2017, 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