

DATE: July 25, 2016

_____)
In Re:)
[REDACTED]) Claims Case No. 2015-WV-102803.2
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee is aware or should be aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to retain them for eventual repayment to the government.

DECISION

An employee of the Department of Defense (DoD) requests reconsideration of the June 16, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-102803.

Background

The employee was employed by DoD in Germany. As a result, the employee became entitled to receive living quarters allowance (LQA) from November 2, 2006, through December 27, 2006. The employee submitted a *Foreign Allowances Application, Grant and Report*, Standard Form (SF) 1190. The remarks section of the SF 1190 stated the following:

Employee eligible to receive Civ Living Quarters Allowance effective from 11/02/2006 – 12/27/2006. In Germersheim, Germany. Rent = 9,180 Euro
Utilities – 13,053 annually.

On January 7, 2007, the employee transferred to Kuwait and was assigned government quarters. The employee's LQA entitlement should have terminated effective December 28, 2007. However, due to an administrative error, the employee erroneously continued to receive

LQA from December 28, 2007, through February 9, 2013, causing an overpayment of \$153,179.38.

In the employee's waiver request, he states that when he transferred from Germany to Kuwait, he assumed that his LQA entitlement was terminated and would no longer appear on his leave and earnings statement (LES). He states that when he left Germany he completed the paperwork to terminate his LQA entitlement. He states that when he arrived in Kuwait he filled out another SF-1190, and did not check the LQA entitlement box because housing was being provided to him. Although he acknowledges his responsibility to review his LES and report any discrepancies to the appropriate officials, he states that the government should take responsibility for not terminating his entitlement to LQA. He also states that his transfer to Kuwait resulted from a promotion. Therefore, he was expecting an increase in his pay. In his reconsideration request, he states that the government should have conducted an annual audit of his LQA account. If the government had done so, the error would have been discovered.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection 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 there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The fact that the debt arose due to administrative error does not entitle an employee to waiver or relieve him of the responsibility to verify the correctness of the payments he receives. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.3. Waiver is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. Under circumstances in which an employee should have been aware of an error, we have held that when an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action, he is not without fault, and waiver will be denied. *See* DOHA Claims Case No. 2012-WV-110208.2 (December 13, 2012); DOHA Claims Case No. 2009-WV-070101.2 (December 9, 2009); and DOHA Claims Case No. 00111319 (July 19, 2001).

The employee suggests that waiver should be granted because the government did not audit his LQA account on an annual basis. Although the government erred in not terminating the employee's LQA, administrative error by itself does not entitle the employee to waiver. We understand that the employee submitted the proper paperwork to terminate his LQA. However, we note that the employee acknowledges receipt of LES during the period of overpayment. In the two pay periods prior to the termination of his LQA entitlement, his LES reflected he was receiving over \$700.00 a pay period in LQA. Specifically, in the pay period ending (PPE) December 9, 2006, he received \$724.50 in LQA (\$472.92 for quarters and \$251.58 for utilities). In the PPE December 23, 2006, he received \$736.12 in LQA (\$480.48 for quarters and \$255.64 for utilities). Since his LQA terminated on December 28, 2006, he should have expected a significant decrease in the amount of LQA he received in the PPE January 6, 2007. However, in

the PPE January 6, 2007, the employee received \$730.94 in LQA (\$477.12 for quarters and \$253.82 for utilities). In the PPE January 20, 2007, when the employee should have expected no payment for LQA, he received \$724.92 (\$473.20 for quarters and \$251.72 for utilities). The employee's LESs continued to reflect LQA payment for 14 days every pay period through February 9, 2013. Thus, the employee had information at his disposal that indicated he was being overpaid. He had a duty to bring the matter to the attention of the proper officials. Although he states that he filled out the proper paperwork to terminate his LQA and never requested payment of it after he was transferred to Kuwait, he should have specifically raised the matter with pay officials after reviewing his LES for the PPE January 6, 2006. Even though the employee received a promotion, we believe it was not significant enough to mask the continued payment of over \$700.00 per pay period in LQA, especially when he was living in government housing. The employee had no reasonable expectation to continue receiving LQA, and the information was reflected on his LESs.

Conclusion

The employee's request for relief is denied, and we affirm the June 16, 2016, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board