

DATE: October 25, 2016

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In Re: )

[REDACTED] )

) Claims Case No. 2013-WV-061403.3

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

To be considered under the provisions of 5 U.S.C. § 5584(b)(2), an employee's waiver request must be received within three years of the discovery of the debt.

**DECISION**

A former employee of the U.S. Army Corps Engineers requests reconsideration of the August 12, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-061403.2. In that decision, this Office affirmed the determination of the Defense Finance and Accounting Service (DFAS) that the employee's application for waiver in the amount of \$14,710.50 could not be considered because it was not received within the 3-year statute of limitations.

**Background**

On July 12, 2001, the employee sustained a job-related injury. He requested, and was granted, 45 days of continuation of pay (COP), and he continued to receive salary payments. However, during the period August 26, 2001, through September 14, 2001, part of the COP period, the employee's salary was miscalculated causing him to be under paid \$2,882.25. After the employee's COP period ended on September 14, 2001, he became eligible to receive Office of Workers' Compensation Programs (OWCP) payments effective September 17, 2001. His pay records were updated to reflect that he was no longer entitled to receive regular salary during the period September 15, 2001, through October 6, 2001.

However, during the pay period ending (PPE) October 20, 2001, when the employee's agency attempted to update his pay record to retroactively pay him for the amount he was underpaid during the period August 26, 2001, through September 14, 2001, he erroneously received regular salary and retroactive salary payments totaling \$9,182.25. Since the employee was only due \$2,882.25, he was overpaid \$6,300.00 (\$9,182.25 - \$2,882.25).

Finally, since the employee was entitled to receive OWCP payments, he was no longer entitled to receive his full regular salary payments. However, due to administrative error, the employee erroneously received \$8,410.50 in regular salary payments during the PPE November 3, 2001, through December 29, 2001. Therefore, the employee was overpaid \$14,710.50 (\$6,300.00 + \$8,410.50).

DFAS discovered the error and issued the employee a letter of indebtedness in the amount of \$12,077.12, on May 15, 2006. The employee responded to the debt notification by letter dated June 9, 2006. In this letter, the employee informed DFAS that he was requesting his bank records for 2001 and 2002. He also requested DFAS send him a DD Form 2789, *Waiver/Remission of Indebtedness Application*, and the applicable procedures for filing a waiver request. The employee did not file his waiver request until June 20, 2012.

In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's application for waiver could not be considered because it was not received within the 3-year statute of limitations.

In his request for reconsideration, the employee states that the debt goes back over 15 years. He contends that it is not a valid debt. He states that he did not request waiver of \$14,710.50. He requested waiver of approximately \$7,000.00. He does not understand why the debt has increased to over \$12,000.00. He states that he is in poor health and financially is unable to repay the debt. He suggests that the amount be negotiated and he only be held accountable for \$7,000.00 as set forth in his waiver request.

## **Discussion**

Under 5 U.S.C. § 5584, we may waive a claim for an erroneous payment of pay or 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. However, we may not waive collection of an erroneous payment if the employee's application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. *See* 5 U.S.C. § 5584(b)(2). This provision is implemented within the Department of Defense (DoD) by DoD Instruction 1340.23 (February 14, 2006). Enclosure 5 of this Instruction states that the date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. *See* ¶ E5.6 of this Instruction.

On May 15, 2006, the employee was notified by DFAS of the debt in the amount of \$12,077.12. The employee acknowledged receipt of DFAS's notification when he responded on

June 9, 2006. The DOHA adjudicator found that the 3-year period starting running at least by May 2006. Therefore, since the employee's written waiver application was not received until June 2012, we have no authority to consider it. *See* DOHA Claims Case No. 2014-WV-101402.2 (August 21, 2015); DOHA Claims Case No. 06070704 (July 17, 2006); and DOHA Claims Case No. 99050610 (May 27, 1999).

Even if we were able to consider the employee's request for waiver, we agree with the DOHA adjudicator in the appeal decision; waiver would not be appropriate under the circumstances in this case. In this regard, during the period September 15, 2001, through December 29, 2001, the employee received both regular salary payments and OWCP payments. As pointed out by the adjudicator, the purpose of the OWCP is to provide wage replacement benefits, medical treatment and other benefits to federal workers or their dependents who are injured at work. Therefore, since the employee was in receipt of OWCP payments, he reasonably should have known that he was not entitled to receive regular salary payments. In addition, since the erroneous payments of regular salary and the OWCP payments are essentially duplicate payments, we do not believe collection of the amount of compensation equivalent to the OWCP payments would be against equity and good conscience. *See* Comptroller General decision B-247771, Aug. 12, 1992.

As for the employee's contention that he only should be held liable for approximately \$7,000.00, the amount he requested for waiver, we note that DFAS sent him a letter of indebtedness reflecting his debt to be \$12,077.12. Although the adjudicator properly considered the gross amount of the employee's debt in the amount of \$14,710.50, she also explained that DFAS was able to collect approximately \$3,400.00 from the employee, reducing his debt to under \$12,000.00. Finally, financial hardship alone does not provide a basis for waiver. *See* DOHA Claims Case No. 2011-WV-041101.2 (December 20, 2011); and DOHA Claims Case No. 00081602 (November 22, 2000).

## Conclusion

We affirm DOHA's appeal decision of August 12, 2016, that waiver of repayment of the employee's debt may not be considered due to the fact that the request was not received for more than three years after the discovery of the debt. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Natalie Lewis Bley

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