

DATE: July 31, 2017

In Re:)

[REDACTED])

) Claims Case No. 2017-WV-051603.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee was temporarily promoted to a GS-13, step 1, and did not question a *Notification of Personnel Action* issued erroneously granting her a within-range increase to a GS-13, step 2, the next pay period after her promotion. Waiver of the resulting overpayment is not appropriate since she should have questioned the increase given that she had been employed by the federal government for over seven years, had received step increases before her promotion at an interval of at least one year, and was furnished with documentation that on its face conflicted with the increase in her salary.

DECISION

An employee of the Department of Defense requests reconsideration of the June 22, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-051603. In that decision, DOHA denied waiver of the overpayment in the amount of \$6,661.68.

Background

On September 9, 2012, the employee was temporarily promoted from a GS-12, step 4, to a GS-13, step 1, not to exceed September 9, 2015. She subsequently received the correct salary during the period September 9, 2012, through September 22, 2012. During the period September 23, 2012, through March 7, 2015, the employee was overpaid \$6,611.68. The error occurred when a *Notification of Personnel Action*, SF-50, was issued and effective September 23, 2012, erroneously granting the employee a within-range increase (WRI) from a GS-13, step 1, to a GS-13, step 2.

In the appeal decision, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS's) denial of the employee's request for waiver. In her reconsideration request, the employee states that she believed she was entitled to receive a step increase from a GS-13, step 1, to a GS-13, step 2, because prior to her promotion, she was due a step increase from a GS-12, step 4, to a GS-12, step 5. She states that she was told that her WRI should have been processed simultaneously with her promotion in order for there to be no error setting her at the GS-13, step 2 rate. She states that her Branch Manager would have scheduled the actions simultaneously if he had known that she was due her WGI to a GS-12, step 5. She attaches an email from her agency's Management Employee Relations (MER) stating that she should inform both DOHA and DFAS that Human Relations (HR) is working on processing corrections to the actions that caused the debt.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver is precluded if the employee is aware or should have been aware that she was being overpaid. *See* DOHA Claims Case No. 07050112 (May 23, 2007); DOHA Claims Case No. 99071601 (September 28, 1999); Comptroller General decisions B-271308, Apr. 18, 1996; and B-188247, July 6, 1977. We have consistently held that employees are expected to be aware of the waiting periods between step increases and to ask payroll personnel about increases not in accord with those waiting periods. *See* DOHA Claims Case No. 07050112, *supra*; DOHA Claims Case No. 99071601, *supra*; and 68 Comp. Gen. 573 (1989). Additionally, we have further held that an employee who receives documents that on their face show an error in the computation of their pay is considered to be on notice of the error, and the employee will be held at least partially at fault for failing to seek corrective action. *See* DOHA Claims Case No. 07050112, *supra*; and B-239895 (February 14, 1991).

In this case, the employee had been employed by the federal government since 2004 and had previously received step increases. She admits that she was not due her GS-12, step 5, until she had completed 104 weeks as a GS-12, step 4. In addition, on August 28, 2012, prior to her receiving her temporary promotion, she signed a Memorandum of Understanding (MOU) that specifically informed her of the following:

When returned to your permanent position from a temporary assignment, you will be given the salary level you would have achieved had you stayed in that position. If you would have been eligible for a pay increase had you remained in your regular position during the period of temporary assignment, you will receive that increase upon returning to your regular position.

Therefore, the employee was aware of the proper waiting period between step increases. The MOU provides further notice that after she returned to her permanent position as a GS-12, step 4,

she would receive her step increase. Under the circumstances, she should have at least questioned her entitlement to a WRI from a GS-13, step 1, to a GS-13, step 2, in such short a period of time, especially since she was furnished with documentation that conflicted with the increase.

As for the email from the MER, the employee's agency is free to make any retroactive adjustments to her account. Our decision in this matter only deals with the equitable determination of whether waiver is appropriate under the circumstances.

Conclusion

The employee's request for relief is denied, and we affirm the June 22, 2017, appeal decision. In accordance with the Department of Defense 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

Signed: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board