

KEYWORDS: waiver of indebtedness

DIGEST: Section 5584, of title 5, United States Code, provides authority for waiving claims for 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 interest of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

CASENO: 2009-WV-050502.4

DATE: 8/31/2010

DATE: August 31, 2010

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In Re:	)	
[REDACTED]	)	Claims Case No. 2009-WV-050502.4
Claimant	)	

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Section 5584, of title 5, United States Code, provides authority for waiving claims for 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 interest of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

**DECISION**

A U.S. Marine Corps employee requests reconsideration of the August 17, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2009-WV-

050502.3. In that decision our Office denied waiver of \$443.72, which is the debt the employee owes the government.

### **Background**

The record shows the employee requested leave without pay (LWOP) and his request was subsequently granted. As a result, during the period July 20, 2008, through September 13, 2008, the employee's salary was subject to LWOP for periods when he did not have enough annual or sick leave to cover the periods he was away from work. However, due to an administrative error, the employee was erroneously paid for unearned sick leave and annual leave during the period

July 20, 2008, through September 13, 2008, causing an overpayment in the amount of \$768.04. Tax adjustments were applied in the amount of \$324.32, thereby reducing the debt to \$443.72. The employee argues that he did everything in his power to avoid being overpaid. He argues if there is any fault, it lies with the agency and not him. In his request for reconsideration, the employee did not offer anything substantive, but rather made it very clear that he does not have a high opinion of particular employees of the previous Marine base at which he was employed. Additionally, he indicated that he does not intend to pay this debt.

### **Discussion**

Section 5584 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. *See* Department of Defense Instruction 1340.23 (hereinafter Instruction), *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances*, ¶ E4.1.2 (February 14, 2006).

The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver. *See* Instruction, ¶ E4.1.3. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. *See* Instruction, ¶ E4.1.4. In this case, the employee was well aware that he would run out of both annual and sick leave, and should have been carefully monitoring his leave balances. The employee notes that he was receiving leave and earnings statements (LES) during the entire period of overpayment. The employee should have more carefully monitored his LES. We cannot stress too highly the importance of a careful review by each employee of the LES provided by the employing agency. Since LES are issued to employees so they can verify the accuracy of their salary, we have consistently held that an employee who receives LES has a duty to carefully examine them and report any errors. Since the employee failed to do so, we must hold him partially at fault in the matter which statutorily precludes waiver of the overpayment. *See* DOHA Claims Case No. 2010-WV-051301.2 (June 29, 2010), and DOHA Claims Case No. 2010-WV-020206.2 (May 26, 2010).

As to the employee's argument that he is not to blame, and he is being made to pay for the mistakes of others, we have consistently held that the United States is not liable for the erroneous actions of its officers, agents, or employees even though committed in the performance of their official duties. Whether the employee intends to pay the debt or not has no bearing on whether the debt is due.

### **Conclusion**

The employee's request for reconsideration is denied, and we affirm the August 17, 2010, appeal decision. 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.

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board