

KEYWORDS: waiver of indebtedness

DIGEST: An employee of the Department of Defense Education Activity was entitled to a Post Allowance. The employee completed paperwork to change her entitlement to this allowance from married status to single. This change was reflected on her Civilian Leave and Earnings Statement (LES) along with a change from two tax exemptions to one. At that time, there was no category that specifically reflected the number of eligible family members for Post Allowance. As to the amount of the Post Allowance, the record shows that (1) the value of the foreign currency against which the Post Allowance was measured fluctuated significantly when she made this change, and (2) the Post Allowance was increased from 25% to 30% at the same time. In these circumstances, the employee acted in good faith and without fault in accepting the erroneous payments, and the debt may be waived under 5 U.S.C. § 5584.

CASENO: 2009-WV-070101.2

DATE: 12/09/2009

DATE: December 9, 2009

)	
In Re:)	
[REDACTED])	Claims Case No. 2009-WV-070101.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee of the Department of Defense Education Activity was entitled to a Post Allowance. The employee completed paperwork to change her entitlement to this allowance from married status to single. This change was reflected on her Civilian Leave and Earnings Statement (LES) along with a change from two tax exemptions to one. At that time, there was no category that specifically reflected the number of eligible family members for Post Allowance. As to the amount of the Post Allowance, the record shows that (1) the value of the foreign currency against which the Post Allowance was measured fluctuated significantly when she made

this change, and (2) the Post Allowance was increased from 25% to 30% at the same time. In these circumstances, the employee acted in good faith and without fault in accepting the erroneous payments, and the debt may be waived under 5 U.S.C. § 5584.

DECISION

An employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the September 30, 2009, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 09070101.

Background

The record shows that the employee was employed by DoDEA in Japan. Therefore, she was entitled to receive a Post Allowance. A Post Allowance is a cost-of-living allowance under 5 U.S.C. § 5924, intended to serve as a balancing factor to permit employees to spend the same portion of their basic compensation for current living expenses as they would in Washington, D.C., while assigned to a foreign area where the costs of goods and services are substantially higher.¹ The amount of Post Allowance an employee receives is determined by the post of assignment, salary, and number of eligible family members. When the employee initially arrived in Japan in 1999, she began receiving Living Quarters Allowance (LQA) and Post Allowance based on a family size of two. On September 5, 2003, the employee submitted a DD Form 1614, Early Return of Dependent, for her husband to leave Japan for Hawaii. Her spouse departed Japan on September 23, 2003. The employee changed residences at the end of September 2003, and submitted a Housing Allowance Report, DD Form 2367. She indicated she was living alone, with a family size of one. On October 1, 2003, the employee filed an Edit LQA Request through DAPS (the DoDEA Allowance Processing System), again notifying the agency that she had changed her family size from two to one. On October 27, 2003, the employee filed the SF 1190, Foreign Allowances Application, Grant and Report, reflecting her husband was no longer domiciled in Japan, but in Hawaii. On November 1, 2003, the Post Allowance for the area changed from 25% to 30%. Due to an administrative error, the employee erroneously continued to receive Post Allowance on behalf of herself and her spouse for the period September 23, 2003, through June 23, 2007, for an overpayment in the amount of \$3,295.94.

¹When Congress wrote the law pertaining to the Post Allowance, most of the civilians covered were individuals based in Washington, D.C., when they were not living at a foreign post. The language in the law specifically indicates that any Post Allowance for civilians will be based on a comparison of costs at the foreign location and those in Washington, D.C.

Whether to grant waiver under 5 U.S.C. § 5584 is not decided simply as a matter of right, but is to be decided on the principles of equity and fairness presented in each case. In DOHA Claims Case No. 09070101, the adjudicator believed that had the employee at least questioned the absence of a decrease in her Post Allowance in November 2003, which was after she submitted the SF 1190, the perpetuation of this error could have been prevented. Since it has consistently been held that if a recipient of an overpayment is furnished with documentary records or information which, if reviewed, would cause a reasonable person to be aware or suspect the existence of an error, but she fails to review such documentation or otherwise fails to take corrective action, waiver will generally be denied. *See* DOHA Claims Case No. 07052402 (June 5, 2007); DOHA Claims Case No. 09060901 (June 30, 2009); DOHA Claims Case No. 09062501 (June 30, 2009), and Comptroller General Decision B-218722, December 17, 1985.

Discussion

When an employee has access to documentary records or information which, if reviewed, would cause a reasonable person to be aware or suspect the existence of an error, and the employee fails to review such documentation or otherwise fails to take corrective action, waiver will generally be denied. The record shows in this case that the employee corrected her status with the agency on all the pertinent forms that were required. Shortly after she made the changes on the forms her Department of Defense Civilian LES reflected that change. A LES dated September 6, 2003, which would have reflected the beginning of this period shows in block #17, Tax, Marital Status: M and Exemptions: 2. A LES dated December 13, 2003, which would have reflected the end of the period when all the forms had been submitted (particularly the SF 1190) shows in block # 17, Tax, Marital Status: S and Exemptions: 1. The Post Allowance amount reflected in Current Earnings was \$296.82, on the September 6, 2003, LES; and \$364.90, on the December 13, 2003, LES. At that time, in late 2003, there was no category that reflected the numbers of family members eligible for Post Allowance. (This has been changed in current LESs). At that time, the yen was fluctuating significantly.² Additionally, at the exact time that the Post Allowance change was to take effect, there was an increase in the Post Allowance from 25% to 30%.

Every indicator on the employee's LES showed the change had been effected. Even though the amount of Post Allowance did not decrease but actually increased, given the factors listed, the employee acted in good faith and without fault in accepting the erroneous payments. Therefore, the debt may be waived under 5 U.S.C. § 5584.

Conclusion

²*See* Comptroller General Decision B-254705, February 14, 1994.

The employee's request for reconsideration is granted, and the debt is waived in the full amount of \$3,295.94. 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.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

///Original Signed///

Jean E. Smallin
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board