

recommendation that waiver of \$16,285.50, the amount of overpayment the employee received from an erroneous lump-sum leave payment, be denied.

Background

The record shows that the employee, effective October 3, 2007, resigned from the U.S. Army Installation Management Agency. He then held a Non-Appropriated Funds (NAF) position under the Uniform Funding and Management (UFM) authority. As a result, his lump-sum leave should have been transferred to the NAF payroll. However, due to an administrative error, during the pay period ending February 2, 2008, he erroneously received a lump-sum leave payment in the gross amount of \$16,285.50 (462 hours x \$35.25 per hour), which is the amount being considered for waiver.

The employee argues that the overpayment should be waived because of the hardship it has caused him. Specifically, in his request for reconsideration he notes that on October 1, 2009, his installation transitioned to a joint base, and he became an Air Force employee. He states that the rules regarding the transition allow for leave balances to be paid upon the employee's request. He argues that he missed the opportunity to be paid for his leave because it was mistakenly paid out earlier; and when and if it is restored, the deadline to make the request will have passed. If his leave is restored, he will have leave that he will be unable to take, and will ultimately forfeit. Therefore, he requests waiver of the overpayment of \$16,285.50.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances if collection 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. Waiver is not appropriate when the employee was aware of the overpayment. *See* DOHA Claims Case No. 00081602 (November 22, 2000) and DOHA Claims Case No. 00073101 (August 21, 2000), *aff'd* by Deputy General Counsel (Fiscal) on December 21, 2001. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* DoD Instruction 1340.23, ¶ E4.1.4 (February 14, 2006). Performance of such duties is an obligation on the part of the employee, and there is no basis to diminish the recovery of the United States due to the dilatory or improvident recovery actions of pay officials.

Even if we could have considered waiver on the basis urged by the employee, the amount that should be waived would be speculative. This would be resolved only after the employee presented his claim for recovery of a specific amount of forfeited hours, and the government official with final authority to decide such a claim considered such issues as whether the employee could still receive payment for part or all of this leave, and whether any leave could be restored. The Director of the Office of Personnel Management (OPM) settles claims involving Federal civilian employees' compensation and leave. *See* 31 U.S.C. § 3702(a)(2). The employee may pursue the resulting claim with OPM.

Conclusion

The employee's request for reconsideration is denied, and we affirm the January 28, 2010, decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense on this waiver application.

///Original Signed///

Michael D. Hipple
Chairman, Clams Appeals Board

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