

KEYWORDS: waiver of indebtedness

DIGEST: Due to an administrative error, an employee’s salary was miscalculated causing her to be overpaid. Under 5 U.S.C. § 5584, the Department of Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payment of pay and 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, provided that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

CASENO: 2010-WV-020206.2

DATE: 5/26/2010

DATE: May 26, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-WV-020206.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee’s salary was miscalculated causing her to be overpaid. Under 5 U.S.C. § 5584, the Department of Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payment of pay and 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, provided that there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

DECISION

A U.S. Army employee requests reconsideration of the April 27, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-020206. In that decision, our Office granted waiver of \$101.64, but denied waiver of \$2,753.27.

Background

The record shows that the employee was reassigned for duty with Operation Enduring Freedom outside the Continental United States, pursuant to a temporary duty order issued April 8, 2008. As a result, the employee's status under the Fair Labor Standards Act (FSLA) should have changed from nonexempt to exempt. Due to an administrative error, the employee's FSLA status remained nonexempt. When she worked overtime during portions of this temporary duty, the employee was paid one and one-half times her basic salary, instead of her overtime rate being capped at the GS-10, step 1 rate. First, her pay was miscalculated during the period May 11, 2008, through June 21, 2008, causing an overpayment of \$101.64. The employee was paid correctly during the period June 22, 2008, through July 19, 2008. The record shows that a Notification of Personnel Action (SF-50), issued to the employee on July 25, 2008, granted the employee a promotion from a GS-9, step 2, to a GS-11, step 1, effective July 20, 2008. The employee's FSLA status remained erroneously listed as nonexempt instead of exempt; and when she worked overtime from July 20, 2008, through November 8, 2008, she was again paid one and one-half times her basic salary, instead of her overtime rate being capped at GS-10, step 1, causing an overpayment of \$2,751.95. Finally, during the pay period September 14, 2008, through September 27, 2008, she erroneously received a retroactive overtime payment in the amount of \$1.32. Thus, the total amount of the overpayment to the employee is \$2,854.91.

Discussion

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 the collection of the claim would be against equity and good conscience and not in the 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 a waiver of this claim. *See* DOHA Claims Case No. 04020909 (February 12, 2004), *aff'd* by Deputy General Counsel (Fiscal) (September 23, 2004); and DOHA Claims Case No. 03072812 (July 30, 2003).

The employee argues that she was not sitting in front of a computer in an office, but rather the majority of her time was spent at an ammunition supply point. She states that she looked at the pertinent information on her Leave and Earning Statement (LES) when she was able. Her argument concerning access to her pay account is lessened by the fact that during her deployment she changed her Thrift Savings Pay account deduction twice (LES Pay Period Ending (PPE) June 21, 2008, and LES PPE November 8, 2008) and changed her savings allotment (LES PPE June 7, 2008). When asked on her *Waiver/Remission of Indebtedness Application*, DD Form 2789, No.17.a., if she had received LES(s), she checked "yes". To support her argument that her pay fluctuated during her deployment she lists thirteen different pay periods during her deployment, and only two of those have the same (correct) rate of pay.¹

¹ The employee requested in the request for reconsideration "a copy of the entire packet used to arrive at your decision." She states that she was told by a representative of DFAS that she would have to request this information based on the Freedom of Information Act, and she hoped that by including this request in the reconsideration submission to our Office, it would be sufficient. First, it is likely that the employee has all the documents used to arrive at our decision because they are all the documents that DFAS should have provided her when they reached

This, however, supports the adjudicator's argument that a careful review of her LES should have caused this employee to question her pay given such discrepancies. The LES is issued to employees so that they can verify the accuracy of their pay. We cannot stress enough the importance of a careful review by each employee of the LES provided by the agency. We have consistently held that employees have a duty to carefully examine their LES and report any errors. If the employee fails to fulfill this obligation, we have held that the employee is at fault and waiver is precluded. *See* DOHA Claims Case No. 05072804 (August 23, 2005), and DOHA Claims Case No. 02050613 (May 23, 2002).

Conclusion

The employee's request for reconsideration is denied, and we affirm the April 27, 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.

///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

their administrative decision. The only other documents this Office would have would be those provided by the employee. This Office does not do independent factual research, but relies on the record provided by the component concerned. Second, we are not able to provide records that are the responsibility of another agency, in this case DFAS. Therefore, the employee should direct her request to DFAS.