

KEYWORDS: waiver of indebtedness

DIGEST: Due to administrative error, an employee's salary was miscalculated causing him to be overpaid. He was unaware he was being overpaid until he was notified of the indebtedness. Under 5 U.S.C. § 5584, the erroneous overpayments he received before notification may be waived. However, the erroneous overpayments he received after notification may not be waived because waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous. In such instances, the recipient acquires no title to the excess amounts and has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government.

CASENO: 2010-WV-062805.2

DATE:7/15/2010

DATE: July 15, 2010

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In Re:)	
	[REDACTED])	Claims Case No. 2010-WV-062805.2
)	
Claimant)	
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to administrative error, an employee's salary was miscalculated causing him to be overpaid. He was unaware he was being overpaid until he was notified of the indebtedness. Under 5 U.S.C. § 5584, the erroneous overpayments he received before notification may be waived. However, the erroneous overpayments he received after notification may not be waived because waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous. In such instances, the recipient acquires no title to the excess amounts and has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government.

DECISION

An employee of the Navy requests reconsideration of the June 30, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) regarding the amount waived by DOHA on the initial determination of his waiver request under 5 U.S.C. § 5584. In the decision, the adjudicator waived collection of \$42,943.91, and denied waiver of \$1,218.14, on a total indebtedness owed to the government of \$44,162.05. The determination was in accordance with the recommendation of the Defense Finance and Accounting Service (DFAS).

Background

The record shows that effective December 31, 2000, the employee was reassigned from another agency. Prior to reassignment, the employee was a WG-06, step 5 (\$15.28 per hour), and after reassignment he received \$17.29 per hour. On April 1, 2009, the employee was advised that the hourly rate at reassignment was erroneous because the Navy used an incorrect locality to calculate his pay, and that his salary should have remained at \$15.28 per hour. As a result of this administrative error, the employee's salary and overtime was miscalculated from December 31, 2000, to April 11, 2009, resulting in a total overpayment of \$43,380.71. Additionally, during the pay period May 24 - June 6, 2009, the employee erroneously received retroactive payments in the total amount of \$781.34 (for the period from May 11, 2008, through January 3, 2009). Thus, the total indebtedness was \$44,162.05.

As we construe his July 7, 2010, reconsideration brief, the employee requests the Board to increase the amount waived based on the difference between the \$44,162.05 of indebtedness established by DFAS and the amount of \$43,313.83, or \$848.22. The amount of \$43,313.83 is what the employee thought was the amount of indebtedness based on DFAS correspondence dated June 17, 2009, as referenced in his own correspondence with DFAS on June 22, 2009.¹ He contends that if he had timely received the DFAS correspondence of July 21, 2009, and knew that the debt was actually \$44,162.05, he would have changed the amount of his request. The employee also offered his summarized explanation of the main aspects of his waiver request, but he did not challenge the basis of the adjudicator's decision not to waive overpayments that he received after notification, including the retroactive payments in the amount of \$781.34 that he received during the pay period ending June 6, 2009.

Discussion

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments to an employee of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States. 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 waiver. *See* Department of Defense Instruction

¹The copy of the employee's *Waiver/Remission of Indebtedness Application*, DD Form 2789, contained in the record provided by DFAS shows that the amount in Block 11 (Gross Debt Amount) is \$44,162.05, and this application was signed by the employee on June 22, 2009.

1340.23 (Instruction) ¶ E4.1.3. Waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous. In such instances, the recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

Our review of the record clearly indicates that the amount of indebtedness reported by DFAS, and fully considered by DOHA for possible waiver, was \$44,162.05, not \$43,313.83. Even assuming for the purposes of this reconsideration request that DFAS did not transmit its July 21, 2009, correspondence to the employee in a timely manner, and even if there had been no entry in Block 11 when the employee signed his DD Form 2789, there is no harmful error because the DOHA adjudicator fully considered \$44,162.05 for possible waiver. The full amount of the debt was not actually waived because the employee continued to receive overpayments after he knew, or should have known, that portions of the payments he received (adding up to \$1,218.14) were possibly erroneous as explained by the adjudicator in her decision.

Conclusion

The decision of June 30, 2010, allowing waiver in the amount of \$42,943.91, and denying waiver in the amount of \$1,218.14, is affirmed. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense concerning this waiver application.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board