

KEYWORDS: waiver of indebtedness

DIGEST: Under 5 U.S.C. § 5584, the 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 interests 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-051201.2

DATE: 6/17/2010

DATE: June 17, 2010

In Re:)	
[REDACTED])	Claims Case No. 2010-WV-051201.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the 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 interests 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

An Air Force employee requests reconsideration of the May 28, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-051201. In that decision our Office granted waiver of \$225.60, and denied waiver of \$2,634.58, of the collection of the debt the employee owes the government.

Background

On October 28, 2007, the employee, a GS-11, step 2, was reassigned to a temporary position as a YA-02 for a period not to exceed April 24, 2008. This temporary promotion was later determined to be erroneous, and the employee became indebted to the United States for the resulting overpayments from October 28, 2007, through February 2, 2008.¹ A further review of the employee's pay revealed that he was paid correctly from February 2, 2008, through February 16, 2008. A Notification of Personnel Action (SF-50) issued February 15, 2008, erroneously granted the employee a five percent raise in his salary effective February 17, 2008. The Defense Finance and Accounting Service (DFAS) determined that due to this administrative error, the employee's salary was miscomputed from February 17, 2008, through January 17, 2009, causing an overpayment of \$2,860.18. The employee requested waiver of the overpayment, and DFAS forwarded the claim to our Office. Under the provisions of 5 U.S.C. § 5584, DFAS recommended that we waive the entire amount of the debt on the grounds that the employee accepted the overpayments in good faith, since he was advised that he was entitled to the salary increase. The DOHA adjudicator denied waiver. The adjudicator stated that the employee received his corrected salary during the pay period ending (PPE) February 16, 2008. For the PPE March 1, 2008, and March 15, 2008, the employee's salary was substantially similar to the PPE February 16, 2008. During the PPE March 29, 2008, the employee noticed an increase in his salary. He brought it to the attention of Civilian Pay and was assured the raise was valid. The adjudicator determined that it was not reasonable for the employee to believe that he was entitled to the raise since it exceeded the last incorrect amount. The adjudicator concluded that the employee should have continued to question the payment, asked for documentation until the matter could be resolved, and set aside money to settle the debt. The adjudicator stated that the employee provided no justification or documentation to explain why he was entitled to the raise. The employee requests reconsideration on the basis that he believes his actions to be reasonable. He states, "My reasonable action was to bring this up to [base] civilian pay experts and civilian personnel representatives, which I did. I was told by those experts that this was authorized and from that point on logically and reasonably believed what those authorized experts told me to be true and factual."

Discussion

Under 5 U.S.C. § 5584, we have 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. The legal definition of "fault" does not imply any ethical lapse on the part of the employee. It merely indicates that he is not entirely without some responsibility for any resulting overpayment and that therefore the equitable remedy of waiver is not available to him. The standard we employ to determine fault is that of a reasonable person: if such a person knows or should know that he is receiving money to which he is not entitled, he is at fault if he fails to bring the excess payments to the attention of the appropriate officials. In such a situation, waiver is precluded. See *Standards for Waiver Determinations*, DoD Instruction (hereinafter Instruction) 1340.23, ¶ E4.1 (February 14, 2006), codified at 32 C.F.R. Part 284, Appendix B.

¹ The employee submitted a request for waiver of this indebtedness which was previously granted by this Office.

The employee stated that he alerted civilian pay representatives to the possible error. This is exactly what he should have done. However, our decisions and those of the Comptroller General have consistently held that there is no basis for waiver unless the official(s) providing the faulty advice indicating that the employee was entitled to what he received are identified, and the employee's version of the events is corroborated in the written record by pay and disbursing officials. See DOHA Claims Case No. 02120917 (December 20, 2002); DOHA Claims Case No. 01010906 (March 8, 2001); DOHA Claims Case No. 97042817 (July 1, 1997); and Comptroller General decision B-256417, July 22, 1994.² In this case, the record includes an email by the Deputy Commander of the employee's unit to DFAS. In answer to an inquiry from DFAS, the Deputy Commander states, "I received your voicemail from yesterday concerning [the employee's] indebtedness and advising that you needed someone to state that he was told this increase was proper, I can do that. . . Our [unit] was advised by Mr. [redacted] from civilian personnel that he had initiated the second 5% increase for [the employee] and that it was proper. I then relayed that to our commander and to [the employee]." Therefore, in this case, the record contains the member's statement that he followed up with pay officials; it describes a named official from civilian pay contacting the employee's supervisor; it contains a statement from the supervisor who is in a position of leadership; and it contains a Notification of Personnel Action (SF-50) issued February 15, 2008. All of these facts lead this Board to conclude that waiver is appropriate.

Conclusion

The employee's request for reconsideration is granted and the debt is waived in the full amount of \$2,860.18. In accordance with the Instruction, ¶ 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

² The standard under 10 U.S.C. § 2774 is the same as that applied under 5 U.S.C. § 5584.