

DATE: January 11, 2011

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In Re: )

[REDACTED] )

) Claims Case No. 2010-WV-100701.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

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 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 or any other person having an interest in obtaining the waiver.

**DECISION**

An employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the December 13, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-100701. In that decision DOHA denied waiver of collection of overpayment of salary in the amount of \$1,527.60.

**Background**

The record shows that on October 27, 2008, the employee was converted to an excepted appointment as an Educational Aide, AD-03, for a period not to exceed August 1, 2009. The record also shows that on April 19, 2009, her employment was terminated. The employee was correctly paid through pay period ending (PPE) April 25, 2009. Due to an administrative error, the employee erroneously continued to receive salary payments through May 23, 2009, causing an overpayment of \$1,527.60.

The employee stated in a letter to DoDEA dated September 9, 2010, that she was fired from her job “because I blew the whistle on the staff at [Redacted] School for child abuse.” She also stated in the attachment to DD Form 2789, *Waiver/Remission of Indebtedness Application*, dated August 17, 2009, that “On April 19<sup>th</sup>, 2009, I was given notice by [Redacted]. I was told that because the special needs student that I was assigned was leaving and therefore I was not needed anymore.” The Standard Form (SF) 50 issued on October 27, 2008, that converted her position to an excepted appointment as an Educational Aide states in the remarks that temporary employees serve under appointments limited to 1 year or less and are subject to termination at any time without the use of adverse action or reduction-in-force procedures. The SF50 issued on August 1, 2009, indicates the nature of action was a termination due to the expiration of the appointment. The employee stated that she was surprised when she received the first check, but figured that the school administration was doing it to keep from losing the position. The employee stated that when she received another check, she reported it to the unemployment office. The employee stated that she is unable to repay the debt because of financial hardship.

The adjudicator in the DOHA appeal decision determined that the recommendation of DoDEA should be sustained, in that the waiver should not be granted. The adjudicator noted that while the employee stated she was not aware of the overpayments, she also acknowledged that she received the erroneous payments. This Office has consistently held that when an employee receives an unexplained salary payment, she should be aware of the strong likelihood that it is erroneous and promptly bring it to the attention of appropriate officials. The employee stated that she notified the unemployment office, but there is no evidence in the file that she notified DoDEA regarding the payments, or at least attempted to obtain a reasonable explanation for the payments. In her request for reconsideration, the employee submits that she was terminated from her job because she “told on the principals and how they were abusing a child.” She states that she truly believed when she received the money that it was to preclude the position from closing. She submits that she is unemployed, has a mortgage, two children, and cannot repay the debt.

### **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 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 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 the waiver. As the statutory language indicates, whether to grant waiver under 5 U.S.C. § 5584 is not decided simply as a matter of right whenever an employee innocently receives salary to which she is not entitled, but is to be decided on the principles of equity and fairness presented in each case. The employee acknowledged that the payments were erroneous. This Office has consistently held that when an employee knows, or reasonably could be expected to know, that she is receiving a salary to which she is not entitled, she has a duty to retain such amounts for subsequent refund to the government, and make prompt inquiry to the appropriate officials concerning her pay. Since the employee failed to do so, collection of the overpayment would not be against equity or good conscience, nor contrary to the best interests of the United States. *See* DOHA Claims Case No. 2010-WV-032201.2 (May 27, 2010); DOHA Claims Case No. 2009-WV-090804.2 (April 14, 2010); and DOHA Claims Case No. 07052901 (June 13, 2007).

The employee contends that she was terminated due to her report of a child abuse allegation, but this Office has no authority over this matter. The employee should direct her concerns to DoDEA, or to the appropriate law enforcement agency. While the overpayment resulted from administrative error, 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 1340.23 (hereinafter Instruction), *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances*, ¶ E4.1.3, February 14, 2006. The employee's assertion that she cannot repay this debt is not a proper consideration. Financial hardship is not a factor for consideration in determining whether waiver is appropriate. See Instruction, ¶ E4.1.7. The employee should contact the DoDEA to request a payment plan.

The employee submitted no new matters in her request for reconsideration.

### **Conclusion**

The employee's request for reconsideration is denied. In accordance with the Instruction, ¶ E8.15, this is the final administrative action by the Department of Defense in this matter.

*///Original Signed///*

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
Member, Claims Appeals Board

*///Original Signed///*

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Natalie Lewis Bley  
Member, Claims Appeals Board