

KEYWORDS: Waiver of Indebtedness

DIGEST: Payments which are valid when made are not erroneous payments and, therefore, may not be considered for waiver under 5 U.S.C. § 5584.

CASENO: 2010-WV-102501.2

DATE: 01/26/2012

DATE: January 26, 2012

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| In Re: |) | |
| [REDACTED] |) | |
| Claimant |) | Claims Case No. 2010-WV-102501.2 |
| |) | |

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Payments which are valid when made are not erroneous payments and, therefore, may not be considered for waiver under 5 U.S.C. § 5584.

DECISION

A former employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the November 3, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-102501. In that decision, this Office determined that an employee's debt could not be considered for waiver.

Background

The record shows that the employee retired on January 1, 2010, from her position as a teacher with DoDEA. The employee's salary was prorated each school year, which entitled her to receive salary for 26 pay periods based on a relatively even installment payment plan calculated in anticipation of her completing a full school year. However, during school year (SY) 2008-09, the employee requested absence from duty at various times between August 20,

2008 (her first duty day) and June 12, 2009 (when school year ended). As a result, the employee was in a Leave Without Pay (LWOP) status for 478 hours during SY 2008-09. Therefore, when the agency reconciled the employee's salary for the pay period ending (PPE) July 29, 2008, through July 4, 2009, (salary disbursing over 26 pay periods), it determined she had been overpaid in the gross amount of \$8,157.79.

In addition, the reconciliation identified an additional debt for SY 2008-09. At the beginning of SY 2008-09, the employee was given 24 hours of annual leave and 96 hours of sick leave. However, the employee exceeded the authorized leave limit by 36 hours during the school year. As a result, she became indebted in an additional amount of \$1,940.04. Therefore, the total indebtedness amounted to \$10,097.83.¹

In the employee's request for reconsideration, she questions the validity of the debt. She contends that her supervisor treated her in an unprofessional manner. The employee received two eight-week periods of leave from the employee leave bank under the Family Medical Leave Act. She also received donated leave from individual employees under the Donated Leave Program. She questions whether all of this leave was properly applied to her pay account. The employee acknowledges that money was being collected from her regular pay to settle the debt. However, she states that these deductions were erratic and she was never notified about the amount of indebtedness until February 8, 2010. For all these reasons, the employee believes that collection of the debt would be against both equity and good conscience and not in the best interest of the United States.

Discussion

Title 5, United States Code, § 5584, 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 there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any person having an interest in obtaining the waiver.

While our Office has the authority to consider certain claims of the United States for waiver under the provisions of 5 U.S.C. § 5584, this statute specifically limits our authority to claims which have arisen from an "erroneous payment." If the payments were correct when made, regardless of the subsequent events, we have no authority to relieve an employee of her obligation to repay the United States. Since the overpayment for prorated pay resulted from the reconciliation of the employee's salary, it does not represent erroneous payments. The overpayment arose because the employee took LWOP and exceeded her authorized leave limit during the school year. Therefore, the overpayment may not be considered for waiver under the provisions of 5 U.S.C. § 5584. *See* DOHA Claims Case No. 2010-WV-100702.2 (January 19, 2011).

¹ The employee has currently repaid \$2,825.99, to offset the debt generated by her LWOP status. In the appeal decision, the adjudicator noted that this amount applied to the debt would reduce the amount owed to \$7,271.84, which was the amount considered for waiver in the appeal decision.

The adjudicator explained the above principle in the appeal decision. The adjudicator advised the employee that if she questioned the validity of the debt, or believed she received donated leave that was not credited to her pay account, she should contact DoDEA. When the adjudicator sought specific contact information from DoDEA on the employee's behalf, DoDEA took the opportunity to audit as many of the employee's pay records as were available to them. In doing so, it reduced the initial reconciliation portion of the debt by \$1,794.25, and increased the leave overage portion of the debt by \$80.84. Thus, the total debt was reduced by \$1,713.41.²

The authority of our Office in this matter is limited to the availability of the equitable remedy of waiver. As discussed above, the employee's debt cannot be considered for waiver because it did not arise from erroneous payments. *See* 5 U.S.C. § 5584(a). The employee's contention that leave was not properly recorded against her salary, in effect, presents a compensation claim for this leave. Our Office has no authority to consider this type of claim; it must be presented to the employee's employing agency with appeal to the Office of Personnel Management (OPM). *See* 31 U.S.C. § 3702(a)(2).³ *See also* 2011-WV-032112.2 (May 25, 2011).

Conclusion

The request for reconsideration is denied, and in accordance with the Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Gregg a. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

² Assuming \$2,825.99 is still the amount the employee has currently repaid, this amount applied to the debt would reduce the debt owed to \$5,558.43.

³ DoDEA indicated that the employee should make her claim for advanced and donated leave to Domestic Dependent Elementary and Secondary Schools (DDESS). DDESS Headquarters is in Peachtree City, Georgia. DDESS retains this type of records, and would only forward the records if DoDEA made a request.