

\$88,100.00 per annum to \$91,206.00 per annum due to a regular performance pay increase. Another SF-50 was issued on January 24, 2008, effective January 6, 2008, increasing the employee's salary from \$86,384.00 per annum to \$103,640.00 per annum for a regular performance pay increase. The agency later determined that the employee's salary should have been increased to \$92,029.00 effective January 6, 2008. As a result, the employee was overpaid \$14,392.80 from January 6, 2008, through February 28, 2009.

In his request for waiver in the appeal decision, the employee states that information he was given, both verbally and in writing, gave him every reason to believe that his revised salary was correct. He states that he was informed that he did exceptionally well on his last assignment. He states that it was a year later in January 2009 when he was first told of a possible mistake. While he acknowledges that the almost \$15,000.00 increase in pay was more than a normal increase, he did not think it was excessively high or incorrect.

The adjudicator in the appeal decision noted that the record does not contain any documentation of the assurances the employee indicates he was given that his pay was correct. The adjudicator also pointed out that in the present case, the employee received a performance pay increase of the approximate amount of \$3000.00, and ten days later received an SF-50 correcting his performance pay increase and raising it approximately \$15,000.00. The adjudicator notes that the record does contain the employee's National Security Personnel System (NSPS), Employee Notice of Pay Pool Decisions for the 2007 performance cycle. According to this document, effective January 1, 2008, the employee was awarded a base salary increase of \$3,471.00, and a bonus of \$1,425.00 for his performance during 2007. Given the discrepancy between this document and an almost \$15,000.00 increase, the adjudicator determined the employee should have questioned his entitlement to such a large increase.

Discussion

The employee seeks waiver of the debt under title 5, United States Code, § 5584. This statute is implemented within the Department of Defense under Department of Defense Instruction 1340.23 (February 14, 2006) (hereinafter Instruction). Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing.

While an administrative error did occur, our Office has consistently held that the waiver statute does not apply automatically to relieve the debts of all employees who, through no fault of their own, have received erroneous payments from the government. Waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. *See* Instruction, ¶ E4.1.1.

Generally, debts may be waived only when collection would be against equity and good conscience and would not be in the best interest of the United States. *See* Instruction, ¶ E4.1.2.

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

In this case, the employee should have questioned his entitlement to such a large increase. The fact that he did not attempt to obtain a reasonable explanation from an appropriate official makes the employee partially at fault, and statutorily precludes waiver of the claim. *See* DOHA Claims Case No. 09010501 (January 8, 2009). Additionally, in this case the employee offered no new information in his request for reconsideration. He merely stated that he disagreed with the decision.

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 10, 2011, decision to deny waiver in the amount of \$14,392.80. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: James B. Norman

James B. Norman
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board