

KEYWORDS: waiver of indebtedness

DIGEST: Waiver under 10 U.S.C. § 5584 is not appropriate when an employee knows or should know she is receiving payments in excess of her entitlements.

CASENO: 2010-WV-072301.2

DATE: 9/09/2010

DATE: September 9, 2010

In Re:)
 [REDACTED]) Claims Case No. 2010-WV-072301.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver under 10 U.S.C. § 5584 is not appropriate when an employee knows or should know she is receiving payments in excess of her entitlements.

DECISION

An employee seeks reconsideration of the July 29, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-072301. In that decision, DOHA denied waiver of the employee's indebtedness.

Background

The employee's debt arose when she was paid living quarters allowance (LQA) at an erroneous rate from June 15, 2005, through July 8, 2007. From March 2005 through May 2005, the employee was living with her son at a location in Germany and receiving full LQA of over

\$900 per pay period. In June 2005, the employee was reassigned to another location in Germany, where she and her son lived with her husband, who was a military member on active duty. Since her husband was receiving overseas housing allowance, the employee's LQA entitlement at the second location should have been reduced by 50%. Instead, she received over \$1,000 per pay period, causing an overpayment of \$30,916.07.

DOHA's adjudicator denied waiver of the debt on the grounds that the employee should have been aware that she was being overpaid. The employee maintains that she notified the appropriate officials that she was living with her husband at her new location and that she was told to expect a higher rate of LQA because her rent and utilities were higher at the new location. The employee also cites Comptroller General decision B-229102, Dec. 5, 1988, in which waiver of a debt was granted, and requests that her debt be considered in light of that decision.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver is usually not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. In such a case, the employee has a duty to notify the proper authorities and set aside the funds for eventual repayment. *See* Instruction ¶ E4.1.4.

In the present case, when the employee was reassigned and was living with her husband who was a military member, she was entitled to only half of the full LQA rate for her circumstances. Therefore, she should have expected a significant decrease in LQA. While the LQA might not have decreased by a full 50% due to increases in rent and utilities at the new location, an overall increase in the employee's LQA payments was not reasonable. While the employee acted correctly in notifying financial officials that she was now sharing living expenses with her husband, she should not have accepted their explanation for her increased LQA and should have persisted in questioning it. In the meantime, the employee should have set aside the questionable amounts she was receiving for eventual repayment to the government.

The employee compares her situation to that of another employee in Comptroller General decision B-229102, *supra*. In that case, an employee was erroneously advised that he could include his second automobile in his household goods shipment as long as he did not exceed his household goods weight limit. Because that employee was new to government service, he had no reason to question the erroneous advice he received. In the present case, however, the employee knew or should have known that her LQA would decrease significantly. She should not have accepted financial officials' explanations for the increased LQA. *See* Instruction ¶ E4.1.6.

Conclusion

Accordingly, the employee's request for reconsideration is denied, and we affirm the DOHA appeal decision of July 29, 2010. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

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