

KEYWORDS: waiver of indebtedness

DIGEST: Due to an administrative error, an employee’s salary was miscalculated causing her to be overpaid. Under 5 U.S.C. § 5584, the Department of 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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

CASENO: 2010-WV-051301.2

DATE: 6/29/2010

DATE: June 29, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-WV-051301.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee’s salary was miscalculated causing her to be overpaid. Under 5 U.S.C. § 5584, the Department of 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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

DECISION

A U.S. Army employee requests reconsideration of the June 8, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-051301. In that decision, our Office denied waiver of \$14,948.04.

Background

The record shows the employee was assigned to a new position effective January 20, 2008. Due to an administrative error, the Notification of Personnel Action (SF-50) affecting the assignment incorrectly placed the employee's status under the Fair Labor Standard's Act (FLSA) as Nonexempt, instead of Exempt. As a result, the employee erroneously received overtime pay at the rate of one and a half times her basic salary, instead of being capped at the GS-10, step 1 rate. Due to this administrative error, the employee's pay was miscalculated causing an overpayment in the amount of \$14,948.04, from the pay period ending (PPE) February 2, 2008, through PPE November 22, 2008.

The employee requests reconsideration of the denial of her request for waiver. She notes that the adjudicator determined she should have questioned the discrepancy in her salary, and in answer to that she states, "[H]ad I not been working so much overtime, I might have noticed." She also argues that, "I [don't] consider it in the best interest of the United States to tell an employee they must now pay back the money earned while trying to do a good job because they failed to take more interest in their personal well-being than the massive job undertaken."

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 the collection of the claim would be against equity and good conscience and not in the interest of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with 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 a waiver of this claim. *See* DOHA Claims Case No. 04020909 (February 12, 2004), *aff'd* by Deputy General Counsel (Fiscal) (September 23, 2004); and DOHA Claims Case No. 03072812 (July 30, 2003).

The employee argues that she was too busy to view her pay data, and if she hadn't been working so much overtime perhaps she might have noticed. As the adjudicator discussed in the appeal decision, the employee stated that her overtime rate was determined by the rate indicated in Block 6 of her Leave and Earnings Statement (LES). The employee states that she shouldn't be accountable for an error made by the personnel and payroll offices. While an administrative error did occur, our Office has consistently held that the waiver statute does not automatically apply 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 that arises solely by virtue of an erroneous payment being made by the government. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. In this case, a review of the employee's LES would have revealed that the overtime rate reflected in Block 6 on her LES for PPE February 2, 2008, through November 22, 2008, times the number of hours overtime that she worked that period would be an amount far below what she received in each pay period. A review of the first LES received in the new position would have revealed this error, and the employee should have specifically questioned it. The LES is issued to employees so that they can verify the accuracy of their pay. We cannot stress enough the

importance of a careful review by each employee of the LES provided by the agency. We have consistently held that employees have a duty to carefully examine their LES and report any errors. If the employee fails to fulfill this obligation, we have held that the employee is at fault and waiver is precluded. *See* DOHA Claims Case No. 05072804 (August 23, 2005), and DOHA Claims Case No. 02050613 (May 13, 2002).

In response to the employee's argument that it is against the interests of the United States to tell an employee they must pay back money they "earned", it is important to note the employee's right to equitable relief. The standards for granting waiver are set forth in the Department of Defense Instruction (hereinafter Instruction) 1340.23 (February 14, 2006). The standards, in Enclosure 4 of the Instruction, in pertinent part, state:

E4.1.1. 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. . .

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 8, 2010, appeal decision. 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