

KEYWORDS: waiver of indebtedness; voluntary separation incentive pay (VSIP)

DIGEST: Waiver under 5 U.S.C. § 5584 is not available to relieve an employee of the obligation to repay voluntary separation incentive pay (VSIP) when she accepted a new position in the Federal civilian service within 5 years of the separation upon which her incentive pay was based. Waiver under 5 U.S.C. § 5584 requires an erroneous payment, but the payment of VSIP in this case was proper when made.

CASENO: 2010-WV-110806.2

DATE: 5/19/2011

DATE: May 19, 2011

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-WV-110806.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver under 5 U.S.C. § 5584 is not available to relieve an employee of the obligation to repay voluntary separation incentive pay (VSIP) when she accepted a new position in the Federal civilian service within 5 years of the separation upon which her incentive pay was based. Waiver under 5 U.S.C. § 5584 requires an erroneous payment, but the payment of VSIP in this case was proper when made.

DECISION

An employee of the Air Force requests reconsideration of the April 27, 2011, appeal decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2010-WV-110806. In that decision, DOHA concluded that it cannot consider the employee’s request for waiver

under 5 U.S.C. § 5584 that the government waive her debt in the amount of \$25,000 that she incurred when she returned to Federal service within five years of receipt of voluntary separation incentive pay (VSIP) in the amount of \$25,000. The DOHA adjudicator noted that the VSIP paid to the employee when she retired in 2004 was a proper payment when made, and that it did not become erroneous, which is a condition precedent to the application of 5 U.S.C. § 5584, because of the subsequent events.

In her request for reconsideration, the employee states that she simply wishes to exhaust her remedies. She understands that the waiver authority under 5 U.S.C. § 5584 is limited to claims arising from erroneous payments, and that the payment of VSIP made to her was not in error. She also notes that the error was made by the Air Force officials who recruited and rehired her.

Discussion

The appeal decision is reasonable and does not contain any error of fact or law. As noted in the appeal decision, as set forth under 5 U.S.C. § 9902, the Secretary of Defense may approve waiver of repayment of VSIP in certain limited circumstances. *See also* DoD Civilian Personnel Management System: Voluntary Separation Programs, DoD 1400.25-V1702, ¶ E3.2e. Our Office cannot exercise this authority.

Conclusion

The employee's request for relief is denied, and we affirm the April 27, 2011, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee's waiver request under 5 U.S.C. § 5584.

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