

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 he accepted re-employment as a Federal civilian employee within 5 years of the separation upon which his 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-112202.2

DATE: 12/14/2010

DATE: December 14, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-WV-112202.2
)	
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 he accepted re-employment as a Federal civilian employee within 5 years of the separation upon which his 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

Background

An employee of the Air Force requests reconsideration of the November 29, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-112202. In that decision DOHA held that it cannot consider the employee’s request under

5 U.S.C. § 5584 that the government waive his debt in the amount of \$25,000 that he incurred when he returned to Federal service within five years of receipt of a voluntary separation incentive pay (VSIP) in the amount of \$25,000. The adjudicator noted that the VSIP paid to the employee when he 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 Section 5584, because of subsequent events. The employee describes those subsequent events as his being “recruited” by the Air Force because it needed his experience, and his agency mistakenly advised him that it would waive VSIP repayment.

In his reconsideration request, the employee does not demonstrate any error of law or fact in the appeal decision. He states he “simply wish[es] to formally exhaust the appeal options which remain available to me.” He acknowledges that he did not question whether his re-employing agency had authority to waive repayment, but again notes that the error was made by the Air Force.

Discussion

The appeal decision is reasonable and does not contain any error of fact or law. As noted both in the May 17, 2010, Administrative Report of the Defense Finance and Accounting Service and in the appeal decision, any waiver of repayment of VSIP that may be available should be processed under 5 U.S.C. § 9902. The re-employing agency and the Civilian Personnel Policy Office in the Office of the Secretary of Defense have responsibilities in this regard.

Conclusion

A request for waiver under 5 U.S.C. § 5584 cannot be considered in these circumstances, and we affirm the November 29, 2010, 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board