

KEYWORDS: waiver of indebtedness

DIGEST: Due to an administrative error, an employee's salary was miscalculated causing him to be overpaid. He was unaware he was being overpaid until he was notified of an indebtedness on February 11, 2009. Under 5 U.S.C. § 5584, the amounts he received before notification may be waived. However, the amounts he received after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

CASENO: 2010-WV-061401.2

DATE: 7/22/2010

DATE: July 22, 2010

In Re:)	
[REDACTED])	Claims Case No. 2010-WV-061401.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee's salary was miscalculated causing him to be overpaid. He was unaware he was being overpaid until he was notified of an indebtedness on February 11, 2009. Under 5 U.S.C. § 5584, the amounts he received before notification may be waived. However, the amounts he received after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

An employee of the Air Force requests reconsideration of the June 17, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-061401. In that decision, DOHA waived \$324.80 of the government's claim and denied waiver of \$2,404.00.

Background

The employee was a Management Analyst at a base in the United States. The record shows that a Notification of Personnel Action (SF-50) issued November 17, 2008, granted the employee, a YA-01 (\$44,256.00 per annum), a promotion to YA-02 (\$54,494.00 per annum), effective November 9, 2008. It was later determined that the employee's promotion in the National Security Personnel System (NSPS) to pay band 2 was erroneous and that his salary should have been established as \$53,108.00 per annum as a YA-01. Due to this error, the employee's salary was miscalculated when he received pay adjustments and a conversion to a career conditional appointment. These administrative errors caused the employee to be overpaid \$1,006.40 from November 9, 2008, through July 18, 2009. Additionally, during the pay period ending July 18, 2009, the employee erroneously received a \$1,462.40 retroactive payment which represented basic salary for the period November 9, 2008, through March 28, 2009; and a duplicative \$260.00 lump-sum performance payment. Thus the total claim is \$2,728.80.

The employee argues that while he received two debt notices in July 2009 and one in August 2009, they covered pay that was paid in periods that were prior to February 11, 2009, when he did not have notice of the overpayment, and so he had no idea the payments were erroneous at that time. He argues that he had no intent to deceive the government in accepting these payments, and the amount is what he would have expected to receive, as he did not understand the NSPS guidelines.

Discussion

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments to an employee of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Department of Defense Instruction 1340.23 (hereinafter Instruction), ¶ E4.1.3. Waiver 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 to set aside the funds for eventual repayment to the government. *See* Instruction, ¶ E4.1.4.

As stated, waiver is inappropriate if the employee is aware he is being overpaid. *See* DOHA Claims Case No. 07100201 (October 10, 2007), and DOHA Claims Case No. 05090603 (September 14, 2005). Once the employee was notified on February 11, 2009, that he was being overpaid, he did not acquire title to any overpayments he received after that point, and has a duty to return the excess amounts to the government. Although the employee suggests that he should be able to retain the funds because they were paid for periods prior to February 11, 2009, he was on notice that he had been overpaid when he received the funds. In this regard, the significant date is the date the employee receives the payment, not the date when the work was actually performed.

Conclusion

For the reasons stated in this decision, we affirm the June 17, 2010, decision denying waiver in the amount of \$2,404.00, and granting waiver in the amount of \$324.80. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

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Jean E. Smallin
Member, Claims Appeals Board

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