

KEYWORDS: waiver of indebtedness

DIGEST: Waiver under 5 U.S.C. § 5584 is not appropriate when an employee fails to verify the correctness of his pay as indicated on the Leave and Earnings Statements (LES) furnished to him by his employing agency.

CASENO: 2010-WV-050405.2

DATE: 6/10/2010

DATE: June 10, 2010

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2010-WV-050405.2
	)	
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver under 5 U.S.C. § 5584 is not appropriate when an employee fails to verify the correctness of his pay as indicated on the Leave and Earnings Statements (LES) furnished to him by his employing agency.

**DECISION**

A U.S. Army employee requests reconsideration of the May 6, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-050405. In that decision, our Office denied waiver of \$2,939.04.

**Background**

A U.S. Army employee was stationed outside of the continental United States (OCONUS). The record shows that due to an administrative error on December 9, 2007, the employee's 2007 deductions for Old Age, Survivors, and Disability Insurance (OASDI) were

erroneously transferred into his 2008 year-to-date record in the payroll system. As a result, the payroll system erroneously reflected that the employee had met the cap for OASDI deductions for 2008, and deductions were stopped. During the pay period ending (PPE) May 10, 2008, through December 20, 2008, no deductions for OASDI were withheld, causing an overpayment of \$2,939.04.

The employee states in his appeal and his request for reconsideration that the fact that he is an OCONUS employee should be considered as a factor in his ability to recognize differences in his pay. As an OCONUS employee he states that his pay was always fluctuating based on payments for Living Quarters Allowance (LQA) and post allowance. At the same time he states that an administrative error caused his Thrift Savings Plan (TSP) contributions to stop. So while no OASDI deductions would increase his net pay, the tax implications of no TSP contributions would decrease his net pay making it more difficult for him to identify pay errors.

The employee argues that waiver should be granted because administrative error did occur. He argues that the errors largely offset each other and a prudent person would not have been alarmed at the net pay changes reflected on the Leave and Earnings Statement (LES). He points out that at the bottom of the LES is a "REMARKS" section which provides pay information. He argues that "[t]he OASDI and TSP changes were never noted in the remarks section on any of the LES." He states that "'typical' LES reviews involve reviewing the net pay amount and leave balances. A significant change in net pay would prompt an individual to take a closer look to try and determine what caused the pay to change." He argues that to deny his reconsideration is against equity and good conscience due to an assertion that he failed to complete a careful review of his LES documents and should have caught the errors earlier. He continues to contend that an OCONUS pay LES is expected to vary from pay period to pay period, and that should be considered in the determination. He contends that, in this instance, when you also add in the two off-setting errors, coupled with drastically fluctuating LQA and post allowance changes, there would be no warning sign of error. Therefore, he argues that he meets the standard for waiver. The Defense Finance and Accounting Service (DFAS) and the adjudicator at DOHA recommended denial of the waiver pointing to the consistent rulings of this Board that it is the individual's responsibility to review his LES carefully and report any discrepancies to proper officials.

### **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).

Our decisions and those of the Comptroller General stress the importance of an employee's monitoring of his LES and other finance and personnel documents. If the employee

does not monitor these documents, he is considered to be at least partially at fault for payroll errors which could have been halted by his diligence, and waiver of the resulting debt is not appropriate. See DOHA Claims Case No. 98112018 (January 11, 1999); and Comptroller General decision B-188822, June 1, 1977. In the case before us, the record indicates that the employee did receive his LES since he admitted that he did on his *Waiver/Remission of Indebtedness Application*, DD Form 2789, dated March 9, 2009. This employee also noted what he considered an appropriate LES review. He stated, “a typical LES review consists of validating leave earned/taken, gross pay and net pay. I do not regularly review each and every breakdown of taxes, OASDI, FEHB, etc as shown on each LES, and contend that such a critical, in-depth review, is not the normal expectation of a ‘prudent person’.” That is exactly the review that is expected by this Board, and is the reason why the LES is provided to an employee so he may verify the accuracy of his pay. The employee submits two LES to support his contention that the net pay amounts were not significantly different to cause him to further review his pay to determine any errors. However, on the two LES he provided, clearly on one there is no deduction for OASDI, and on the other there is no deduction for TSP.

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 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 23, 2002).

### Conclusion

The employee’s request for reconsideration is denied, and we affirm the May 6, 2010, appeal decision. 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.

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board