

KEYWORDS: waiver of indebtedness; Living Quarters Allowance (LQA)

DIGEST: A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

CASENO: 2011-WV-010506.2

DATE: 7/28/2011

DATE: July 28, 2011

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2011-WV-010506.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

DECISION

An employee of the Army requests reconsideration of the June 10, 2011, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2011-WV-010506. In that decision, DOHA denied waiver of the government's claim in the amount of \$6,150.93.

Background

The record shows that while the employee worked in Germany, she was entitled to receive Living Quarters Allowance (LQA). From pay period ending (PPE) August 11, 2001, through March 22, 2003, the employee was paid LQA in the amount of \$36,840.91. However, during the reconciliation of her account, the Defense Finance and Accounting Service (DFAS)

determined that the authorized amount was \$30,689.98. Therefore, the employee was overpaid LQA in the amount of \$6,150.93.

As our adjudicator explained, LQA payments are estimates of housing expenses, which are subject to reconciliation at the end of the LQA period. They are generally not eligible for waiver consideration because they do not constitute erroneous payments. The adjudicator explained the reconciliation process in detail. The adjudicator determined that while the overpayment may have resulted from no fault on the employee's part, there was no indication that she received erroneous payments of LQA. Therefore, the adjudicator determined that this Office could not consider the debt for waiver under 5 U.S.C. § 5584.

In this case, the employee contends that there were erroneous LQA payments in the amounts paid for living quarters versus utilities. She states she received a letter from DFAS, dated December 2, 2004, indicating an overpayment record had been generated on her pay account for a change in her Living Quarter Allowance (Utilities) for the PPE August 11, 2001, through March 22, 2003. The letter stated the gross overpayment was \$6,150.93. On an attachment to the letter, the LQA Quarters (LQAQ) and LQA Utilities (LQAU) were broken out into separate columns. The LQAQ total was \$4,911.56, and the LQAU total was \$1,239.37. The letter from DFAS stated that the overpayment was due to utilities, and therefore the overpayment was \$1,239.37. The employee notes that in Germany they were required to provide a copy of the signed contract for rent to the Civilian Personnel Operating Center (CPOC). She states that her rental expenses remained constant throughout the three years she remained in Germany despite the changeover from the Deutsche Mark to the Euro. However, CPOC made an error in the initial setting of the LQA, which was not discovered during the initial reconciliation, but was discovered during the final reconciliation. The employee contends that since CPOC was responsible for setting the amount of LQAQ, that was an erroneous payment. Due to the fluctuating currency and the change to the Euro, she states that she could not have discovered the error.

As to the LQAU, the employee contends that this overpayment was also the result of an erroneous payment. During her initial reconciliation, the employee requested that adjustments be made in the amount she was paid for LQAU. She asked for a reduction, which was not implemented. This would have reduced the amount of overpayment for LQAU; however, she is not certain of the exact amount due to conversion rates. Therefore, in her request for reconsideration, the employee contends that the government did erroneously miscalculate the LQA payments, and they should be waived.

Discussion

In this case, the employee's debt resulted from the overpayment of LQA. Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates periodically a reconciliation is performed, under which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowable expenses. Thus, we have held that 5 U.S.C. § 5584 generally does not apply to excess advances of LQA unless LQA payments have been

made erroneously. *See* DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999).

The employee believes that because she was told everything was okay with the exception of the utility portion of her LQA during her initial reconciliation, and because she was not notified that CPOC made an error in her quarters portion of her LQA that she should not be held liable for an error committed by CPOC in setting her LQA payments. The employee believes that collection of the debt is against both equity and good conscience, and not in the best interests of the United States. The payments when made, however, were only estimates. While there may have been some discrepancies in the estimates, we are unable to conclude that erroneous LQA payments were made in this case, and so the resulting debt may not be considered for waiver under 5 U.S.C. § 5584.

Regarding the employee's argument that the overpayment resulted from agency error, and through no fault on her part, and she should not be held accountable for an agency error in inputting erroneous information into the LQA system, there is no indication that she received erroneous payments of LQA. Even if the action was in error, we have consistently held that the United States is not liable for the erroneous acts of its officers, agents, or employees even though committed in the performance of their official duties. *See* DOHA Claims Case No. 98033023 (June 25, 1998).

As our Office's adjudicator previously advised the employee, this does not prohibit the employee from pursuing other avenues of relief. Under 5 U.S.C. § 5922(b), the head of the agency involved (the Secretary of the Army in this case) has authority to waive the excess amount after reconciliation under the regulations of the President (*i.e.*, the State Department's Standardized Regulations). Additionally, the employee should contact DFAS with questions concerning the calculation of the debt.

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 10, 2011, decision that waiver cannot be considered, and the debt to the government of \$6,150.93 remains. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: James E. Moody

James E. Moody
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board