

KEYWORDS: waiver of indebtedness

DIGEST: 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. While our Office has the authority to consider claims of the United States for waiver under the provision of 5 U.S.C. § 5584, this statute specifically limits our authority only to claims which arose from an erroneous payment. If the payments were correct when made, this Office has no authority to relieve an employee of her obligation to repay the Government.

CASENO: 2010-WV-113004.2

DATE: 2/10/2011

DATE: February 10, 2011

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In Re:	)	
[REDACTED]	)	Claims Case No. 2010-WV-113004.2
Claimant	)	

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

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. While our Office has the authority to consider claims of the United States for waiver under the provision of 5 U.S.C. § 5584, this statute specifically limits our authority only to claims which arose from an erroneous payment. If the payments were correct when made, this Office has no authority to relieve an employee of her obligation to repay the Government.

**DECISION**

An employee of the U.S. Army requests reconsideration of the December 15, 2010 decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2010-WV-113004. In that decision, our Office declined to waive \$13,956.80.

## **Background**

The record shows that on March 11, 2008, the employee enrolled in a Physicians Comparability Allowance Service Agreement (PCA), and became entitled to receive an annual allowance of \$28,000.00, which she subsequently received in monthly stipend payments. As a result, the employee was required to serve with the Department of Defense (DOD) as a physician from April 8, 2008, through April 7, 2010. However, on September 2, 2009, the employee resigned, prior to completing her PCA contract. This required recoupment of a pro rata portion of the PCA she received in the amount of \$13,956.80.

The employee executed a PCA contract which stated in part:

If my employment as a physician is terminated during the period of the agreement at my request, or as a result of my misconduct, I will be required to refund the total amount received under the agreement if I have completed less than one year of the agreement, or if I have completed one year or more of the agreement, I will be required to refund the amount of allowance earned during the 26 weeks prior to termination.

The employee does not argue that she fulfilled the contract. She contends that she had every intention of serving out her contract, but her position and mission of her agency was disestablished by the Base Realignment and Closure (BRAC). She argues that her decision to leave federal service was not voluntary; but when a position became available that was compatible with her area of expertise, she had to take it. The Defense Finance and Accounting Service and the appeal decision from our Office recommended denial of the employee's request for waiver as it did not meet the statutory requirement under 5 U.S.C. § 5584, that specifically limits our authority for waiver only to claims which arise from erroneous payments. The employee has requested reconsideration in light of the extenuating circumstances under which her decision to leave was made. She again asserts that her decision to leave was not a voluntary one, and was forced due to the BRAC and her position being disestablished. She references the appeal decision and the adjudicator's determination that our Office has no authority over such matters. The employee noted that she was referred to the Army and/or the Office of Personnel Management. She asked specifically to be directed to which agency she should appeal.

## **Discussion**

Our authority in this case is limited to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under that section we have the authority for waiving claims for erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from 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 the waiver. If the payments were correct when made, as they were in this case, we have no authority to relieve an employee of her obligation to repay the government, regardless of subsequent

events. *See* DOHA Claims Case No. 08052701 (May 30, 2008), and DOHA Claims Case No. 07050113 (May 17, 2007).

While waiver is not available as a remedy in this situation, we note that PCA are governed by 5 U.S.C. § 5948. Under 5 U.S.C. § 5948(e), recoupment of PCA will be made if the physician voluntarily or because of misconduct, fails to complete the term of the contract unless the head of the agency, pursuant to such regulations as may be prescribed by the President or his designee, determines that failure is necessitated by circumstances beyond the control of the physician. Termination is further discussed in 5 U.S.C. § 5948(f). In this regard, the employee should contact the Secretary of the Army. *See* 2010-WV-110103.2 (January 19, 2011).<sup>1</sup>

### **Conclusion**

The request for reconsideration is denied and in accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative decision 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

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<sup>1</sup> *See also* paragraph 030501 of Volume 8 of DoD 7000.14R, DoD Financial Management Regulation (DoDFMR), Civilian Pay Policy and Procedures; and Physicians Comparability Allowances, 5 C.F.R. part 595.

