

KEYWORDS: Waiver of Indebtedness

DIGEST: Waiver of an employee's debt is not appropriate when the employee knows or should be aware that he was receiving pay to which he was not entitled. Upon receipt of an unexplained salary payment, the employee should be aware of the strong possibility that it is erroneous and promptly bring it to the attention of appropriate officials.

CASENO: 2011-WV-021401.2

DATE: 07/21/2011

DATE: July 21, 2011

In Re:	)	
[REDACTED]	)	Claims Case No. 2011-WV-021401.2
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver of an employee's debt is not appropriate when the employee knows or should be aware that he was receiving pay to which he was not entitled. Upon receipt of an unexplained salary payment, the employee should be aware of the strong possibility that it is erroneous and promptly bring it to the attention of appropriate officials.

**DECISION**

A former employee of the Army requests reconsideration of the May 18, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-021401. In the appeal decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying the employee's request that the government waive the \$25,532.90 debt he incurred as the result of the erroneous payment of salary.

**Background**

The record shows that on February 1, 2009, the employee transferred from the Army to the Department of Homeland Security. Due to an administrative error, the employee erroneously continued to receive salary payments from the Army from February 1, 2009, through July 18, 2009, causing an overpayment in the gross amount of \$25,532.90. DOHA's adjudicator considered the employee's argument that the overpayments resulted from an administrative error, that he did not review his leave and earnings statements (LES) prior to March 23, 2009, because he was no longer employed by the Army; that when he did review his LES on March 23, 2009, he immediately reported the error; and that he was not receiving bank statements for an extended period of time due to sporadic mail service. In reaching her decision, the adjudicator noted that the employee acknowledged receiving the erroneous funds into his bank account. The adjudicator concluded that the employee knew or should have known that he was being overpaid prior to March 23, 2009, because he had a duty to review his LES, especially since he stated he was expecting a week of pay that was held back by the Army upon his initial employment. The adjudicator found that if he had reviewed his LES, he would have discovered the discrepancies of the continued salary payments from DFAS.

In his request for reconsideration, the employee asserts that he met the criteria for waiver under 5 U.S.C. § 5584. However, he states that based on the rationale used by both DFAS and DOHA, the outcome in his case was predetermined. He further states that DOHA's finding that he "knew or reasonably could be expected to know" that he was receiving pay in excess of his proper entitlement, is based on "desperate speculation" by DFAS and DOHA. He states that he had no reason to review his LES for the Army since he was no longer employed by them. He also states that he was not receiving his bank statements because of erratic mail service.

### **Discussion**

Under 5 U.S.C. § 5584, we have authority to waive the collection of erroneous payments of pay and allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States. The standards for waiver determinations are set forth in Enclosure 4 to Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by a mistake, no matter how careless the act of the Government may have been, the recipient received something for nothing. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1. We recognize that the erroneous payments in this case were due to administrative error, but that is not a sufficient basis by itself for granting waiver. *See* Instruction ¶ E4.1.3. A waiver is usually is not appropriate when a recipient of any unexplained payment of pay or allowances, does not attempt to ascertain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5.

The standards for waiver determinations set forth under the Instruction impose upon the employee an obligation to bring to the attention of the proper officials any unexplained increase in pay. We have consistently held that where an employee was aware or should have been aware of an error in pay resulting in an overpayment, he cannot reasonably expect to retain such a payment, but should expect the Government to seek recovery. Under circumstances in which an employee should have been aware of an error, we have held that when an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. *See* DOHA Claims Case No. 04032919 (March 31, 2004), DOHA Claims Case No. 02022603 (April 17, 2002) and B-198769, Aug. 15, 1980. We have consistently held that an employee has a duty to monitor his bank accounts, verify bank statements, and question discrepancies. *See* DOHA Claims Case No. 07103109 (November 15, 2007) and DOHA Claims Case No. 99111916 (December 8, 1999), *aff'd* by the Deputy General Counsel (Fiscal) on December 12, 2000. The fact that an employee has pay sent directly to his bank account does not relieve him of the responsibility of verifying his statements and questioning any discrepancies. *See* DOHA Claims Case No. 02030503 (March 14, 2002), DOHA Claims Case No. 99111916, *supra*, and DOHA Claims Case No. 97013102 (July 23, 1997).

In this case, the DOHA adjudicator reasonably concluded that the employee should have been alerted to overpayments if he had reviewed his leave and earnings statements (LES), in February 2009. The employee states that he had no reason to check his LES because he was no longer employed by the Army. He also states that he was not receiving his bank statements because of the erratic mail service. However, when the employee filed his waiver application, he informed DFAS that he had access to his LES online and that the erroneous payments were deposited into his bank account. Under the circumstances, the employee had access to information that clearly indicated he was being overpaid. He had a duty to monitor his bank account, verify his statements and question discrepancies. We believe he should have exercised greater caution by promptly reviewing his LES and bank deposits for error, considering he was expecting payment for one week of pay that was held back. If the employee had reviewed his LES and monitored his bank account as he was expected to do, he would have known that he received erroneous payments of salary in February 2009. Upon receipt of the unexplained deposits, the employee had a duty to question his entitlement to them and set them aside in the event repayment was necessary. When an employee is aware or should be aware that he is receiving erroneous or questionable payments, he does not acquire title to the excess amounts. *See* DOHA Claims Case No. 99111916, *supra*. DOHA's adjudicator reasonably concluded that waiver was not appropriate in such circumstances.

## Conclusion

The employee's request for waiver relief is denied, and we affirm the May 18, 2011, appeal decision. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board