

KEYWORDS: Waiver of Indebtedness

DIGEST: Administrative error, by itself, is not a sufficient basis for waiving a debt under 5 U.S.C. § 5584.

CASENO: 2011-WV-030802.2

DATE: 08/24/2011

DATE: August 24, 2011

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In Re: )  
      [REDACTED] ) Claims Case No. 2011-WV-030802.2  
                  )  
Claimant \_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Administrative error, by itself, is not a sufficient basis for waiving a debt under 5 U.S.C. § 5584.

**DECISION**

An employee of the Army requests reconsideration of the July 27, 2011, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-030802. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS), and waived \$1,349.16 of the \$1,913.70 that the employee owed the government due to the overpayment of salary, but denied waiver of the \$564.54 balance of the indebtedness. The employee seeks waiver of the remaining \$564.54 of the indebtedness.

**Background**

Effective November 9, 2010, the employee accepted an appointment with the Army as a YC-2, with a salary of \$74,373.00 per annum. At the time of the appointment, the employee's status under the Fair Labor Standards Act (FLSA) should have been listed as exempt. However, due to an administrative error, the Notification of Personnel Action (SF-50) effecting the employee's appointment reflected her FLSA status as nonexempt. Therefore, when the employee worked overtime, she erroneously received overtime pay at the rate of one and one-half times her basic salary, instead of her overtime pay being capped at the GS-10, step 1 rate. As a result, during the pay period ending (PPE) April 24, 2010, through October 9, 2010, the employee's overtime pay was miscalculated causing an overpayment of \$1,467.12. In addition, due to an administrative error, the employee received a retroactive payment in the amount of \$446.58 for basic salary and overtime pay during the PPE December 4, 2010. On October 12, 2010, the employee received notification of her incorrect FLSA status by memorandum dated October 6, 2010, from her Civilian Personnel Advisory Center (CPAC).

In DOHA Claim No. 2011-WV-030802, the DOHA adjudicator concluded that the employee acted in good faith in accepting the overpayments which occurred during the PPE April 24, 2010, through September 25, 2010, in the amount of \$1,349.16, and that all conditions necessary for waiver of this portion of the claim have been met. She further concluded that because the employee became aware of the error concerning her FLSA status prior to receiving her pay for the PPE October 9, 2010,<sup>1</sup> and prior to erroneously receiving a retroactive payment during PPE December 4, 2010, it was not against equity and good conscience to deny waiver of \$564.54.<sup>2</sup>

In her request for reconsideration, the employee states that two errors resulted in her being overpaid in the amount of \$1,913.70, were the initial erroneous processing of the hiring action and the failure to correct her FLSA status after CPAC discovered the error. She asserts that she should not be held accountable for these administrative errors and the continued incompetence of CPAC.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interest of the United States. This statute is implemented within the Department

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<sup>1</sup>The record reflects that the employee received her pay for PPE October 9, 2010, on October 21, 2010.

<sup>2</sup>The employee was overpaid during the PPE October 9, 2010, in the amount of \$117.96. During the PPE December 24, 2010, she erroneously received a retroactive payment in the amount of \$446.58. Therefore, the adjudicator denied waiver of the claim in the amount of \$564.54 (\$117.96 + \$446.58).

of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). The Standards for Waiver Determinations are found at Enclosure 4 of this Instruction. In relevant part, generally, persons who receive a payment erroneously from the government acquire no right to it and are bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. Waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

Generally, debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. *See* Instruction ¶ E4.1.2. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.3. A waiver usually 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 ¶ E.4.1.4.

In the present case, the employee does not dispute the fact that she was notified by CPAC on October 12, 2010, that her FLSA status was in error, resulting in an overpayment. However, she contends she should not be penalized again for CPAC's incompetence in not correcting the problem after they advised her by memorandum that the error had been corrected. As stated above, administrative error, by itself, is not a sufficient basis for granting waiver of an indebtedness under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 07121701 (February 6, 2008) and DOHA Claims Case No. 07103006 (November 7, 2007). Further, waiver is inappropriate if the employee is aware she is being overpaid. *See* DOHA Claims Case No. 2010-WV-010812.3 (June 11, 2010). Once the employee was notified on October 12, 2010, that she was being overpaid, she does not acquire title to any overpayments she received after that point, and has a duty to return the excess amounts to the government. *See* DOHA Claims Case 2009-WV-090804.2 (April 14, 2010).

### **Conclusion**

The employee's request for relief is denied, and we affirm the July 27, 2011, decision to deny waiver in the amount of \$564.54. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Acting Chairman, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board

Signed: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board