

KEYWORDS: Waiver of Indebtedness

DIGEST: Due to an administrative error, an employee’s salary was miscalculated, causing him to be overpaid. He was unaware he was being overpaid until he was notified of the indebtedness in June 2009. Under 5 U.S.C. § 5584, the amounts he received before notification may be waived. However, the amounts he received after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

CASENO: 2011-WV-022806.2

DATE: 9/16/2011

DATE: September 16, 2011

In Re:)	
REDACTED)	
Claimant)	Claims Case No. 2011-WV-022806.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee’s salary was miscalculated, causing him to be overpaid. He was unaware he was being overpaid until he was notified of the indebtedness in June 2009. Under 5 U.S.C. § 5584, the amounts he received before notification may be waived. However, the amounts he received after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

An employee of the Army requests reconsideration of the July 11, 2011, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2011-WV-022806. In that decision, DOHA waived \$2,995.49 of the government’s claim and denied waiver of \$2,693.05.

Background

The record shows that a Notification of Personnel Action (Standard Form/SF-50) issued March 3, 2008, reassigned the employee, an Electronics Engineer, YD-02, (\$71,848.00 per annum) to a YD-02 (\$77,670.00 per annum). The position should have been a promotion for the employee, but prior to the effective date, the position was converted to a reassignment under the National Security Personnel System (NSPS). Although the action was properly processed as a reassignment, civilian personnel improperly computed the employee's new salary based upon the GS promotion rule. Because of this error, the employee's basic salary, night differential pay, overtime pay, and incentive award were miscomputed. The record shows that due to these administrative errors, the employee was overpaid \$2,995.49, during the period March 2, 2008, through June 6, 2009.

The record further shows that when the Defense Finance and Accounting Service (DFAS) attempted to correct the erroneous reassignment, the employee was underpaid \$366.40 from June 7, 2009, through July 4, 2009. This reduced the employee's debt to \$2,629.09. Additionally, during the period June 21, 2009, through July 4, 2009, the employee erroneously received a retroactive payment in the amount of \$831.00, which represented a second incentive award payment for the period January 4, 2009, through January 17, 2009. This increased the overpayment to \$3,460.09. Finally, the record shows that the employee was paid the correct basic salary and overtime payment during the pay period July 5, 2009, through July 18, 2009. However, he was erroneously issued a retroactive payment in the amount of \$2,228.45 which represented basic salary, night differential, and overtime pay for the period January 4, 2009, through June 20, 2009. Thus, the total overpayment was \$5,688.54.¹

The adjudicator in the appeal decision determined that there was no indication in the file that the employee received documentation, was notified, or became aware of the erroneous payments prior to June 2009. The employee's director called him into his office to inform him of the situation. Therefore, the adjudicator determined that the employee acted in good faith in accepting the overpayment, which resulted in his basic salary, night differential pay, overtime pay, and incentive payment being miscomputed during the period March 2, 2008, through June 6, 2009. The adjudicator found all conditions necessary for waiver of this portion of the claim to have been met. Thus, \$2,995.49 of the overpayment was waived, and \$2,693.05 denied.

In his request for reconsideration, the employee indicates that he has not committed fraud. He provides a copy of a SF-50 which he contends shows he was entitled to the incentive award of \$831.00. The employee also seems to have some questions about the exact amount of the debt.

Discussion

The employee seeks waiver of the debt under title 5, United States Code, § 5584. This statute is implemented within the Department of Defense under Department of Defense Instruction 1340.23 (February 14, 2006) (hereinafter Instruction). 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 mistake, no

¹ See the corrected amount in Discussion section.

matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing.

While an administrative error did occur, our Office has consistently held that the waiver statute does not apply automatically to relieve the debts of all employees who, through no fault of their own, have received erroneous payments from the government. Waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. *See* Instruction, ¶ E4.1.1.

Generally, debts may be waived only when collection would be against equity and good conscience and would not be in the best interest of the United States. *See* Instruction, ¶ E4.1.2. The fact that an erroneous payment is the result of administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting 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 set aside funds for eventual repayment to the government. *See* Instruction, ¶ E4.1.4.

As stated above, waiver is inappropriate if the employee is aware he is being overpaid. *See* DOHA Claims Case No. 07100102 (October 11, 2007), and DOHA Claims Case No. 05090603 (September 14, 2005). Once the employee was notified in June 2009, that he was being overpaid, he did not acquire title to any overpayments he received after that point, and has a duty to return the excess amounts to the government. *See* DOHA Claims Case No. 2009-WV-111601.2 (February 19, 2010); DOHA Claims Case No. 02030501 (April 18, 2002); and DOHA Claims Case No. 00030709 (April 28, 2000).

If the employee has any specific questions about the amount of the debt, he should address them to DFAS. The employee provided his Leave and Earnings Statements with his request for reconsideration. These were provided to DFAS, which reviewed them, and determined that they had failed to add one retroactive payment to the debt. There was an underpayment on July 4, 2009, that was retroactively paid in PPE July 18, 2009. This amount was \$183.20, thus making the total debt \$5871.74.² As to the incentive award for \$831.00, if the employee reviews the record he will see that he was entitled to payment for one award payment. However, he was paid twice for the same incentive award.

Conclusion

The employee's request for reconsideration is denied, and we affirm the July 11, 2011, decision to grant waiver in the amount of \$2,995.49, and deny waiver in the adjusted amount of \$2,876.25. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

² The employee should request a more current debt computation from DFAS.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

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Michael Y. Ra'anan
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Natalie Lewis Bley
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