

KEYWORDS: waiver of indebtedness

DIGEST: A condition precedent to the granting of waiver relief under 5 U.S.C. § 5584 to forestall the government's collection of a debt owed by an employee, is the existence of an erroneous payment of pay or allowances. Without an erroneous payment, waiver relief cannot be considered.

CASENO: 2011-WV-032112.2

DATE: 5/25/2011

DATE: May 25, 2011

_____)	
In Re:)	
[REDACTED])	Claims Case No. 2011-WV-032112.2
_____)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A condition precedent to the granting of waiver relief under 5 U.S.C. § 5584 to forestall the government's collection of a debt owed by an employee, is the existence of an erroneous payment of pay or allowances. Without an erroneous payment, waiver relief cannot be considered.

DECISION

An employee of the Navy requests reconsideration of the May 9, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) to the extent that the decision denied waiver of the portion of an indebtedness he owes to the government as a result of erroneous payments of retention allowances he received between April 2005 and April 2006. This portion

of the indebtedness is \$12,167.70 of a total indebtedness of \$22,076.70.¹ In his reconsideration brief the employee disputes the finding of the attorney examiner in the appeal decision that the payment of retention allowances during the April 2005 through April 2006 period was erroneous, and he presents additional evidence and argument attempting to show that the allowance was proper.

The employee's position in his reconsideration brief is inconsistent with the relief he sought. He had requested waiver of an indebtedness under 5 U.S.C. § 5584.² But a condition precedent to waiver relief is "the erroneous payment of pay or allowances." See 5 U.S.C. 5584(a). The employee now contends that payment of a retention allowance to him was not erroneous, and in effect, presents a compensation claim for this allowance. Without an erroneous payment, waiver relief cannot be considered See, e.g., DOHA Claims Case No. 2010-WV-110103.2 (January 19, 2011). Moreover, our Office has no authority to consider this type of claim; it must be presented to the employee's employing agency with appeal to the Office of Personnel Management (OPM). See 31 U.S.C. § 3702(a)(2). See also OPM's web site at <http://www.opm.gov/payclaims/rules.asp> (link valid on May 24, 2011).

The appeal decision is affirmed, and in accordance with Department of Defense Instruction 1340.23, ¶ E8.15 (February 14, 2006), this is the final decision of the Department of Defense with regard to waiver relief under 5 U.S.C. § 5584.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: James B. Norman

James B. Norman
Member, Claims Appeals Board

¹The other portion of the debt, \$9,909, represents the erroneous payments of retention allowance paid between April 2004 and April 2005. The employee has not requested reconsideration of this portion of the appeal decision, and it is not in issue in this reconsideration.

²*Waiver/Remission of Indebtedness Application*, DD Form 2789, dated September 18, 2007.