

KEYWORDS: Waiver of Indebtedness

DIGEST: An employee's salary was miscalculated, causing him to be overpaid. Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payments of pay and allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

CASENO: 2011-WV-033107.2

DATE: 11/10/2011

DATE: November 10, 2011

In Re:

[REDACTED]

Claimant

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) Claims Case No. 2011-WV-033107.2
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee's salary was miscalculated, causing him to be overpaid. Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for erroneous payments of pay and allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

The employee requests reconsideration of the September 30, 2011, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-033107. In that decision, our Office denied waiver of an overpayment in the amount of \$15,347.41.

Background

The record shows that the employee erroneously received a retroactive payment in the gross amount of \$15,347.41 during pay period ending (PPE) May 9, 2009. However, since the employee had previously been underpaid in prior pay periods in the amount of \$2,797.28, this amount was applied to the \$15,347.41, reducing the employee's debt to \$12,550.13.¹ In addition, the employee was underpaid \$382.78 during PPE October 10, 2009, which was applied to the \$12,550.13, reducing the debt to \$12,167.35. Finally, during PPE November 21, 2009, the employee erroneously received a retroactive payment in the amount of \$3,180.06. Therefore, the employee was overpaid \$15,347.41.

In his reconsideration request the employee accepts responsibility for the overpayment he received during PPE May 9, 2009, in the amount of \$15,347.41. However, he asserts that he was told by his pay office and the Defense Finance and Accounting Service (DFAS) that he was entitled to the retroactive payment he received in PPE November 21, 2009, in the amount of \$3,180.06, and thus, does not accept responsibility for this portion of the overpayment. He attaches leave and earnings statements (LES) to his request for reconsideration and specifically chronicles what he was told by pay officials and DFAS concerning his entitlement to the retroactive payment of \$3,180.06.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain 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.

¹The record reflects that the employee was notified of the indebtedness by the Defense Finance and Accounting Service (DFAS) on May 9, 2009, and collection began in PPE June 20, 2009.

In this case, the employee's version of events is supported by the written record. Specifically, the employee was emailed by named pay officials and a DFAS official explaining to him that corrections were being processed on his account in order to create retroactive payments to be used to offset the employee's debt. These emails spanned from May 2009 when the employee was initially notified of the debt in the gross amount of \$15,347.41, through October 2009. In addition, after receiving the retroactive payment of \$3,180.06 in PPE November 21, 2009, the employee notified DFAS, and a named DFAS official replied to him by letter dated December 9, 2009, assuring him that he was entitled to the retroactive payment, stating that "Corrections were processed on your account and they have created retroactive payments that have been used to offset the debt." Thus, the employee has presented clear and convincing evidence that he had a reasonable expectation of receiving the retroactive payment. Accordingly, we waive \$3,180.06.

Additionally, the employee should contact DFAS with questions concerning the calculation of his debt, the balance remaining on his indebtedness and any concerns about DFAS's processing of his pay account.

Conclusion

The employee's request for reconsideration is granted and we hereby grant waiver in the amount of \$3,180.06 and deny waiver in the amount of \$12,167.35. In accordance with DoD Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board