

2005, indicating she was indebted to the United States in the amount of \$1,427.58. As a repayment option, the employee elected to submit a Voluntary Repayment Agreement (VRA). However, the employee's VRA was received and processed, but money was never collected from her due to pay office closures and transfers of functions. The employee submitted a request for waiver on August 20, 2010, in response to a letter from the Defense Finance and Accounting Service (DFAS) dated August 10, 2010, that stated collections from her pay would begin or resume.

In the employee's request for waiver, she indicates that she only signed the VRA out of frustration and stress, and she had no way of proving whether she really owed the debt or not because all her household goods were floating on the ocean. The adjudicator noted that the employee was offered an opportunity to request waiver in July 2005 at the same time when she submitted the VRA. The VRA the employee submitted stated that she understood that she owed the \$1,427.58, due to overpayment. The employee did not request waiver until August 20, 2010, and the adjudicator determined that her request was not received within the 3-year statute of limitations.

In her request for reconsideration, the employee argues that she was not notified of the 3-year time limit. She also lists what she believes to be failings of DFAS in their dealings with her. She sites other instances of financial errors that are irrelevant to this case. She contends there is considerable reason to doubt the validity of this claim. She contends that DFAS did not attempt to collect the claim in a timely fashion. She also indicates that the amount initially deducted from her pay was unreasonable. She argues that this will cause a financial hardship.

Discussion

Under 5 U.S.C. § 5584(b)(3), we may not waive collection of erroneous payments to a federal employee if application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. Although the employee contends that she was not aware of the time limit, the employee's actual or imputed knowledge of the time limitation is irrelevant under 5 U.S.C. § 5584(b)(3). The 3-year period runs from the date that the error is discovered by an appropriate official, in this case June 2005. Since the employee's written waiver application was not received until August 20, 2010, we have no authority to consider it. *See* DOHA Claims Case No. 06070704 (July 17, 2006); DOHA Claims Case No. 99050610 (May 27, 1999); and Comptroller General decision B-189170, July 5, 1977.

In the instant case, the employee stated that she understood she owed the debt when she submitted the VRA. The fact that there have been delays by the government does not alter the underlying debt. This Office has consistently held that the United States is not liable for the erroneous acts of its officers, agents, or employees, even though committed as part of their official duties. We note that financial hardship alone does not provide a basis for waiver. DFAS, at its own discretion, may arrange a repayment plan which takes hardship appropriately into account. *See* DOHA Claims Case No. 2009-WV-042405.3 (April 14, 2010).

Conclusion

We affirm DOHA's appeal decision of November 21, 2011, that waiver of repayment of the employee's debt may not be considered due to the fact that the request was not received for

more than three years after the discovery of the debt. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Jean E. Smallin
Chairman, Claims Appeals Board

Catherine M. Engstrom
Member, Claims Appeals Board

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Member, Claims Appeals Board