

KEYWORDS: waiver of indebtedness; Living Quarters Allowance (LQA)

DIGEST: A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

CASENO: 2011-WV-061301.2

DATE: 7/27/2011

DATE: July 27, 2011

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2011-WV-061301.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

DECISION

An employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the June 30, 2011, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2011-WV-061301. In that decision, DOHA denied waiver of the government's claim in the amount of \$1,355.48.

Background

The record shows that while the employee worked in Germany, she was entitled to receive Living Quarters Allowance (LQA). From pay period ending (PPE) September 4, 2004, through January 8, 2005, the employee was paid LQA in the amount of \$11,705.96. However,

during the reconciliation of her account, the Defense Finance and Accounting Service (DFAS) determined that the authorized amount was \$10,350.48. Therefore, the employee was overpaid LQA in the amount of \$1,355.48.

In this case, the employee acknowledges that she filed a LQA reconciliation worksheet in November 2005. However, she states that her first notification of the debt by DFAS was by letter dated May 5, 2010. Also, the employee contends that she was initially notified that the debt amount was \$1,437.47, and not \$1,355.48. The employee contends this is a *prima facie* case of doubt over the validity and amount of the debt. The employee also states that she has repeatedly questioned DFAS about why she is being held accountable for the debt, and she states DFAS has never responded.

As our adjudicator explained, LQA payments are estimates of housing expenses, which are subject to reconciliation at the end of the LQA period. They are generally not eligible for waiver consideration because they do not constitute erroneous payments. The adjudicator explained the reconciliation process in detail. The adjudicator determined that while the overpayment may have resulted from no fault on the employee's part, there was no indication that she received erroneous payments of LQA. Therefore, the adjudicator determined that this Office could not consider the debt for waiver under 5 U.S.C. § 5584.

In her request for reconsideration, the employee indicates that the appeal decision was detailed and she was able to understand that the law dictates that under 5 U.S.C. § 5584 this type of debt is not subject to waiver. The employee did not submit any additional documentation. She noted that she did, however, not understand how she would not be granted a waiver, and yet employees who sign transportation agreements with the agency are routinely granted waivers. She noted her long service to DoDEA both overseas and in CONUS.

Discussion

In this case, the employee's debt resulted from the overpayment of LQA. Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates periodically a reconciliation is performed, under which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowable expenses. Thus, we have held that 5 U.S.C. § 5584 generally does not apply to excess advances of LQA unless LQA payments have been made erroneously. *See* DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999). The employee submitted no new information in her request for reconsideration.

Jurisdiction in this case is limited to waiver consideration under 5 U.S.C. § 5584. However, as our Office's adjudicator previously advised the employee, this does not prohibit the employee from pursuing other avenues of relief. Under 5 U.S.C. § 5922(b), the head of her agency has authority to waive the excess amount after reconciliation under the regulations of the President (*i.e.*, the State Department's Standardized Regulations). The head of the agency is also the waiver authority for period-of-service requirements in transportation agreements referred to

by the employee. The reasons for waiver are specified in the transportation agreement and outlined in paragraph C5574-B of the Joint Travel Regulations, Volume 2. This office has no authority over such matters.

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 30, 2011, decision that waiver cannot be considered, and the debt to the government of \$1,355.48 remains. In accordance with the 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: James E. Moody

James E. Moody
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board