

DATE: January 12, 2012

_____)
In Re:)
 [REDACTED]) Claims Case No. 2011-WV-101206.2
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of a debt under 5 U.S.C. § 5584 is generally not appropriate when a recipient of a significant increase in 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.

DECISION

An employee of the U.S. Air Force requests reconsideration of the December 15, 2011, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-101206. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remaining indebtedness.

Background

The record reflects that effective July 18, 2010, the employee, a Supervisory Human Resources Specialist, YC-02 (\$87,944.00 per annum) was reassigned from the National Security Personnel System (NSPS) to the General Schedule Pay System (GS) as a Human Resources Officer, GS-13, step 2 (\$90,216.00 per annum). However, it was later determined that the employee's salary should have been established as a GS-12, step 7 (\$88,103.00 per annum). As

a result, the employee's basic salary was miscalculated causing him to be overpaid \$969.60, from July 18, 2010, through January 1, 2011. In addition, a *Notification of Personnel Action* (SF-50) issued on January 2, 2011, erroneously granted the employee a within-range increase (WRI) from a GS-13, step 2 (\$90,216.00 per annum) to a GS-13, step 3 (\$93,126.00 per annum). As a result of these two errors, the employee's salary was miscalculated from January 2, 2011, through May 7, 2011, causing him to be overpaid in the amount of \$1,728.00. Therefore, the employee was overpaid \$2,697.60 (\$969.60 + \$1,728.00).

In DOHA Claim No. 2011-WV-101206, the adjudicator waived \$969.60, the portion of the erroneous salary payments the employee received from July 18, 2010, through January 1, 2011. However, the adjudicator denied waiver of \$1,728.00, the erroneous payments the employee received from January 2, 2011, through May 7, 2011. The adjudicator found that the employee should have at least questioned receiving a WRI in January 2011, after receiving such a significant salary increase upon transition from NSPS to GS in July 2010. Since the employee failed to do so, the adjudicator held him partially at fault in the matter, which statutorily prohibits waiver of the claim.

In the employee's reconsideration request, he states that he had no reason to question the WRI he received in January 2011. He states that the Air Force did not discover the error in his salary until May 2011. He attaches his SF-50s reflecting the transition from NSPS to GS in July 2010, and his WRI in January 2011. He states that he was expecting the WRI in January 2011 under the authority of 5 C.F.R. § 532.417.

Discussion

The employee seeks waiver of the debt under title 5 of the United States Code, Section 5584 (5 U.S.C. § 5584). This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Under 5 U.S.C. § 5584, we have the authority to waive the government's claims for repayment of erroneous payments of pay and allowances, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. Waiver usually is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

Since there is no indication of fraud, misrepresentation or lack of good faith on the part of the employee, the issue of waiver turns on whether the employee was at fault with respect to the erroneous overpayment. We consider fault to exist if, in light of all the circumstances, the employee knew or should have known that an error existed but took no action to have it corrected. Specifically, in this case, the question is whether the employee should have been aware of the strong likelihood an error had been made when he received the erroneous WRI and should have brought the matter to the attention of appropriate officials.

We have consistently held that federal employees should be aware of the waiting periods

between within-grade increases and should inquire about an increase not in accord with the appropriate waiting period. *See* DOHA Claims Case No. 07050112 (May 23, 2007); and Comptroller General decision B-201862, Apr. 30, 1981. In determining whether an employee's actions are reasonable with regard to an overpayment, we examine such matters as his position, experience, knowledge, or service history. *See* B-217816, Aug. 23, 1985; and B-189935, Nov. 16, 1978. Thus, the general rule charging employees with knowledge of within-grade increase waiting periods depends on the circumstances, and its applicability must be determined on a case-by-case basis.

In this case, the employee accepted an appointment with the Air Force on May 11, 2009, as a Supervisory Human Resources Specialist, YC-02 (\$83,531.00 per annum). On January 3, 2010, his salary increased to \$87,944.00 due to a general adjustment and regular performance pay. On July 18, 2010, the employee's salary increased to \$90,216.00 upon his reassignment from NSPS to GS. On January 2, 2011, he received the WRI, further increasing his salary to \$93,126.00. The DOHA adjudicator denied waiver on the basis that the employee should have questioned the premature WRI. In his reconsideration request, the employee attaches the Air Force Core Personnel Document, signed by the employee's supervisor on February 18, 2010, which classified his position as a GS-13, Human Resources Officer, prior to his transition from NSPS to GS. This document details the major duties, knowledge, skills, abilities, and responsibilities of his position as a GS-13, Human Resources Officer. This document clearly shows that the incumbent of the position would necessarily have to have specialized knowledge and a thorough understanding of the federal pay system.¹ Therefore, we believe that due to his position, the employee had at least constructive knowledge of the federal pay structure, and under the circumstances, should have questioned the correctness of the increase in his salary in January 2011. Since he made no inquiry concerning the increase, he is not without fault in the matter, and the request for waiver was properly denied. *See* DOHA Claims Case No. 09010501 (January 8, 2009); B-201862, *supra*; and B-189935, *supra*.

We note that the employee states that he was expecting the step increase he received in January 2011 based on 5 C.F.R. § 532.417. However, we note that the SF-50 granting him the WRI lists the legal authority for it as 5 C.F.R. § 531.404. The discrepancy between what the employee thought was the authority for his step increase and what was actually reflected as the authority for his step increase should have given the employee further reason to question his entitlement to the WRI. *See* DOHA Claims Case No. 2009-WV-080408.2 (March 31, 2010); and DOHA Claims Case No. 07110102 (November 26, 2007).

¹We note that in his position, two of the employee's duties reflect that he had to have specialized knowledge of the federal pay system: "Duty 1: Administers appointing and associated authorities on behalf of the federal civil service personnel at an AF installation. . . . Duty 2: Advises the Commander, key managers, and supervisors on the full range of civilian human resource management which includes requirements, accessions, development, sustainment, and separations."

Conclusion

The employee's request for relief is denied, and we affirm the December 15, 2011, decision to deny waiver in the amount of \$1,728.00. In accordance with 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