

KEYWORDS: waiver of indebtedness

DIGEST: Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests 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-121602.2

DATE: 3/15/2012

DATE: March 15, 2012

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In Re:)	
)	
[REDACTED])	Claims Case No. 2011-WV-121602.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests 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

An employee of the U.S. Navy requests reconsideration of the February 27, 2012, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-121602. 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 on January 29, 2008, a *Notification of Personnel Action*, SF-50, converted the employee, a Program Support Assistant, to an excepted appointment. On February 25, 2008, the employee signed a *Recruitment/Relocation or Retention Incentive Service Agreement for Non-Demo Project Selectees or Employees*, for a retention incentive to be paid to her in biweekly installments. On March 17, 2008, an SF-50 was issued granting the employee the retention incentive to be paid biweekly beginning March 16, 2008. On April 15, 2009, an SF-50 was issued terminating the employee's biweekly retention incentive pay payments. Although this SF-50 had an effective date of April 12, 2009, the remarks section stated that the retention incentive pay would terminate on March 1, 2009. However, due to an administrative error, the employee continued to receive retention incentive pay from March 1, 2009, through October 10, 2009, causing an overpayment of \$2,646.90.

In DOHA Claim No. 2011-WV-121602, the adjudicator waived \$497.85, the portion of the erroneous retention incentive pay the employee received from March 1, 2009, through April 11, 2009. However, the adjudicator denied waiver of \$2,149.05, the erroneous retention incentive pay the employee received from April 12, 2009, through October 10, 2009. The adjudicator found that the employee should have at least questioned her continued receipt of the retention incentive pay, especially since she was aware that her entitlement to it was subject to an annual review and had been advised in Spring of 2009 that it was scheduled to expire. The adjudicator considered that even if the employee was told not to worry about the expiration of her retention incentive pay because a request for a continuation of it had been made, the employee still should have requested written verification of her entitlement, especially since an SF-50 had been issued terminating her entitlement to it.

In her request for reconsideration, the employee alleges error in the adjudicator's decision. She states she was already in an excepted service position prior to January 2008. She states that after she was brought on board as a promotion candidate as GS-8 in competitive service, she was told that her paperwork had been processed incorrectly. She states that to fix this problem, she was told that she would be converted to a competitive service employee through the use of an intern career-ladder program. Under this program, she would continue for six months as a GS-7, a non-promotion candidate (lateral). She would then receive a GS-8, and then a GS-9. She further states that in order to remedy the disparity, she was offered the retention incentive pay indefinitely. She contends that she accepted the retention incentive pay as a condition of her employment. She states that she never had any reason to expect the retention incentive pay to expire. She acknowledges that she was advised by her first line supervisor in the Spring of 2009 that her retention incentive pay could possibly become scheduled to expire. However, she states that she never was notified officially of a date of

expiration. She further states that she was told that she “should not worry,” because the continuation of the incentive was at the discretion of the department head. She states that she was also told in the Spring of 2009 that if her retention incentive pay was to expire, she would be officially notified in writing.

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 collection 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. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. Waiver 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. We have consistently held that when an employee is furnished with documentary evidence or information, which, if reviewed, would cause a reasonable person to be aware or suspect the existence of an error, but she fails to review such documents or otherwise fails to take corrective action, waiver will generally be denied. This Office cannot stress enough the importance of a careful review by each employee of the pay data provided by the employing agency. This pay data is specifically provided to the employee in order that they can verify the accuracy of their salary.

In this case, the employee acknowledges that she was told in the Spring of 2009 that her retention incentive pay could possibly be scheduled to expire. In her request for reconsideration, she states that she was told not to worry because the continuation of it was at the discretion of the department head. Therefore, she states that she had no reason to believe that her retention incentive pay would expire. However, the employee offers no documentation to support her contention that the retention incentive pay was granted to her indefinitely. While she may have been told that she was to receive retention incentive pay indefinitely, the agreement she signed on February 28, 2009, specifically states: “For retention incentive only: I understand that the payment of this incentive will be reviewed annually and may be reduced or terminated at any time in accordance with the policy set by the name of the organization. I understand that the decision to terminate this agreement may not be grieved or appealed.” Although the employee states that she never received anything officially in writing in the Spring of 2009 stating that her retention incentive pay expired, we note that an SF-50 was issued on April 15, 2009, terminating her entitlement to retention incentive pay on March 1, 2009. At that point, when she continued to receive retention incentive pay, she should have brought the matter to the attention of responsible agency officials and held the overpayment for eventual repayment to the government. Since she failed to do so, waiver of the \$2,149.05 is not appropriate. *See* DOHA Claims Case No. 2011-WV-040402.2 (October 24, 2011) and DOHA Claims Case No.

97013104 (March 20, 2997).

Conclusion

The employee's request for relief is denied, and we affirm the February 27, 2012, decision to deny waiver in the amount of \$2,149.05. 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