

On August 20, 2007, the employee resigned from her position as a Information Technology Specialist, GS-12, step 3. Due to an administrative error, the *Notification of Personnel Action*, SF-50, reflecting the employee's resignation was not issued promptly. As a result, the employee's pay account was not updated to reflect her resignation. Due to this delay, the employee erroneously received payments totaling \$3,032.80 from November 10, 2007, through June 7, 2008.

Our Office waived a portion of the debt in the amount of \$802.80, which resulted from the erroneous payments made to the employee after her resignation on the pay period ending (PPE) November 10, 2007. However, the DOHA adjudicator denied waiver of the remaining erroneous payments the employee received during the PPE January 5, 2008, through the PPE June 7, 2008, because the employee became aware of the debt in January 2008.

In her request for reconsideration, the employee disputes the amount of the debt. She states that she only received a net amount of \$1,113.01. She states that she has remitted in full the amount she erroneously received from the government. She attaches documentation reflecting an electronic payment in the amount of \$624.40 made by her to the Defense Finance and Accounting Service (DFAS) on July 28, 2011. She states that if she truly is not owed anything for her annual leave then her debt balance should be \$488.61 (\$1,113.01 - \$624.40). She requests that we identify her true entitlement and the correct debt amount.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the Government is not a sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction ¶ E4.1.4.

In this case, the adjudicator properly denied waiver in the amount of \$2,230.00, which represents the amount of erroneous payments the employee received after she became aware of the debt. Specifically, the employee acknowledges receiving leave and earnings statements (LES) during the period of overpayment and a debt notification letter from DFAS dated January 19, 2008. While we appreciate the fact that employee immediately contacted the appropriate officials, and continued to follow up on the matter, this does not change the fact that she was aware she was being overpaid. Although we recognize that the erroneous payments were due to

an administrative error, the employee had no reason to believe that she was entitled to continue to receive payments five months after her resignation from the government, especially after receiving a debt notification letter in January 2008. Therefore, she did not acquire title to the excess amount. *See* DOHA Claims Case No. 99071602 (September 10, 1999). Since she was aware of the overpayment, waiver of the payments made to the employee from the PPE January 5, 2008, through the PPE June 7, 2008, is not appropriate. *Id.*

Although the employee states that she only received the net amount of \$1,113.01, we have consistently held that an employee's debt equals the gross amount minus any amount of deductions that DFAS is able to recover on the employee's behalf. *See* DOHA Claims Case No. 00081602 (November 22, 2000); DOHA Claims Case No. 97050502 (July 23, 1997); and Comptroller General decision B-234731, June 19, 1989. We appreciate the fact that the employee wants to pay what she owes and receive what she is entitled to receive. However, she filed an application for debt waiver under 5 U.S.C. § 5584. Waiver consideration at the appellate level in this Office does not include an adjudication of the validity of the debt. Moreover, our Office has no authority to adjudicate the validity of such debts that arise from disputes involving civilian employee compensation and leave. The validity of such debts must be resolved by the agency concerned, generally DFAS, and ultimately the Office of Personnel Management (OPM). *See* 31 U.S.C. 3702 (a)(2). The employee may pursue her concerns with those agencies.

Conclusion

The employee's request for relief is denied, and we affirm the March 16, 2012, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee's request for waiver under 5 U.S.C. § 5584.

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