

KEYWORDS: Waiver of Indebtedness

DIGEST: Payments which are valid when made are not erroneous payments and, therefore, may not be considered for waiver under 5 U.S.C. § 5584.

CASENO: 2011-WV-102601.2

DATE: 01/26/2012

DATE: January 26, 2012

In Re:	)	
[REDACTED]	)	Claims Case No. 2011-WV-102601.2
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Payments which are valid when made are not erroneous payments and, therefore, may not be considered for waiver under 5 U.S.C. § 5584.

**DECISION**

A former employee of the Department of the Navy requests reconsideration of the December 19, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-102601. In that decision, this Office determined that the request for waiver could not be considered.

**Background**

The record shows that on June 30, 2010, the employee was granted a payment of \$10,000.00 under an incentive service agreement (ISA), which he received during the pay period ending (PPE) July 31, 2010. As a result, the employee was required to serve with the Naval Facilities Engineering Command (NAVFAC) from July 19, 2010, through July 19, 2012 (a

period of 24 months). However, the employee transferred prior to completing his ISA contract, thus requiring recoupment of a pro-rata portion of this relocation bonus.

The employee contends that his tenure at NAVFAC was very upsetting due to the behavior of his supervisor. The employee states that he contacted the Equal Employment Office (EEO), but after he transferred he did not follow through with a complaint as he did not want the government to waste the money that such an action would cost. The employee contends that he believed that transferring to another job within the government was sufficient to meet the terms of the agreement and allow him to keep the funds. He also contends that collection of the debt will cause financial hardship.

### **Discussion**

Title 5, United States Code, § 5584, provides authority for waiving claims for 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 there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any person having an interest in obtaining the waiver.

The language of the ISA stated that the employee, “agree[s] to serve 24 months with NAVFAC Washington as a result of accepting a Relocation Incentive in the amount of \$10,000.00. This amount will be paid out in a lump sum at the beginning of my employment with NAVFAC Washington. I understand that if I do not satisfy the terms of this agreement that I shall be indebted to the Federal Government and subject to repayment of the incentive on a pro-rated basis.”

While our Office has the authority to consider certain claims of the United States for waiver under the provisions of 5 U.S.C. § 5584, this statute specifically limits our authority to only claims which have arisen from an “erroneous payment.” If the payments were correct when made, regardless of the subsequent events, we have no authority to relieve an employee of his obligation to repay the United States. Since the payment for the ISA was proper when made, and the employee’s actions in transferring to another agency resulted in his not completing the 24-month contract with NAVFAC, the overpayment may not be considered for waiver under the provisions of 5 U.S.C. § 5584. *See* DOHA Claims Case No. 2010-WV-100702.2 (January 19, 2011).

The events that the employee outlines that made him consider a complaint to EEO and to transfer to another agency are not within our purview. If he has questions or concerns about these matters he should contact the Department of the Navy and/or the Office of Personnel Management. As to the employee’s assertion that repayment would cause a financial hardship, this Office has consistently held that financial hardship is not a factor for consideration in determining whether a waiver is appropriate. *See* Department of Defense Instruction 1340.23, (hereinafter Instruction) ¶ E4.1.7. However, while financial hardship does not provide a basis for waiver, the Defense Finance and Accounting Service (DFAS), at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account.

## **Conclusion**

The request for reconsideration is denied, and in accordance with the Instruction ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board