

DATE: February 18, 2016

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2012-WV-042003.3
)
)

**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. Army requests reconsideration of the November 5, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-042003.2. In the appeal decision, DOHA denied the employee's request for waiver of an indebtedness in the amount of \$5,716.88.

Background

The employee was serving on a temporary appointment not to exceed September 30, 2010. During the pay period ending (PPE) April 10, 2010, the employee was paid \$3,078.32 (\$2,545.20 for 56 hours of annual leave and \$533.12 for cost of living allowance (COLA)). His pay records were coded leave without pay (LWOP) for 24 hours. It was later determined that the employee was not entitled to receive any pay during the PPE April 10, 2010, and his pay records should have been coded 80 hours of LWOP. As a result, the employee was overpaid \$3,078.32. During the PPE April 24, 2010, the employee's pay records were coded to reflect his separation from service. As a result, during the PPE April 24, 2010, he was paid \$2,638.56 for 48 hours of lump sum leave (LSL) and lump sum COLA retroactive to the PPE April 10, 2010. It was later

determined that the employee should have been placed in a LWOP status, and was not entitled to receive payment for LSL or lump sum COLA during the PPE April 24, 2010. Therefore, the employee was overpaid \$2,638.56 which increased his indebtedness to \$5,716.88 (\$3078.32 + \$2,638.56). The employee's pay records were subsequently updated in December 2010 to correctly reflect his separation from service. As a result of his separation, he was entitled to receive \$2,638.56 for 48 hours of LSL and lump sum COLA retroactive to April 24, 2010. However, instead of applying this amount to the employee's debt, the Defense Finance and Accounting Service (DFAS) erroneously issued him a \$2,638.56 payment on December 4, 2010, retroactive to the PPE April 24, 2010. Therefore, the employee remained indebted to the United States in the amount of \$5,716.88.

In the appeal decision dated November 5, 2015, the DOHA adjudicator sustained DFAS's denial of the employee's waiver request. The adjudicator first noted that the employee stated that he completed his employment with the Army in April 2010. The adjudicator based her denial of waiver on the fact that the employee had a duty to review his leave and earnings statements (LES) to ensure his proper leave balance and pay entitlements. She also noted that the employee did not provide any documentation reflecting that he was informed he was entitled to the payments he received during the debt period. Finally, she found that the employee should have questioned receiving 48 hours of LSL on December 4, 2010, when he had already received 48 hours of LSL during the PPE April 24, 2010.

In his request for reconsideration, the employee states that he did not have a normal job that involved a normal workweek in a normal office environment. He states that variations in his pay happened on a regular basis. He states that he was on continuous temporary duty (TDY) visits. He states that the associated TDY reimbursements were large and a normal part of his pay. He acknowledges that he did not review his LES at the time of his separation because he had a lot of other pressing issues on his mind. However, he states that he assumed that the pay officials were doing their job correctly.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection 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 there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The fact that the debt arose due to administrative error does not entitle an employee to waiver or relieve him of the responsibility to verify the correctness of the payments he receives. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.3. Waiver 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, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. Under circumstances in which an employee should have been aware of an error, we have held that when an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. *See* DOHA Claims Case No. 2014-

WV-090505.2 (April 20, 2015); DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011); and DOHA Claims Case No. 02030503 (March 14, 2002).

In this case, the employee has provided no additional information to warrant reversal of the adjudicator's decision to deny waiver. Although the employee states that large TDY reimbursements were a large part of his pay, this does not absolve him of his responsibility to review his LES. Under the circumstances, the employee had information at his disposal at that time that indicated an error in his record. He had a duty to bring the error to the attention of proper officials. Thus, we uphold the adjudicator's decision to deny waiver of the claim.

Conclusion

The employee's request for relief is denied, and we affirm the November 5, 2015, appeal decision. In accordance with DoD Instruction 1340.23 ¶ 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