

KEYWORDS: Waiver of Indebtedness

DIGEST: 1. Waiver of an overpayment of Temporary Quarters Subsistence Expense (TQSE) is appropriate to the extent that the overpayment was spent for its intended purpose. 2. Without an erroneous payment, waiver relief under 5 U.S.C. § 5584 cannot be considered. If an employee believes he is entitled to the amount in dispute, he should pursue a claim with the appropriate officials.

CASENO: 2012-WV-051703.2

DATE: 10/18/2012

DATE: October 18, 2012

_____)
In Re:)
 [REDACTED]) Claims Case No. 2012-WV-051703.2
)
Claimant)
_____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

1. Waiver of an overpayment of Temporary Quarters Subsistence Expense (TQSE) is appropriate to the extent that the overpayment was spent for its intended purpose.

2. Without an erroneous payment, waiver relief under 5 U.S.C. § 5584 cannot be considered. If an employee believes he is entitled to the amount in dispute, he should pursue a claim with the appropriate officials.

DECISION

An employee of the U.S. Army requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 2012-WV-051703, dated August 29, 2012, which granted waiver in the amount of \$351.92, and denied waiver in the amount of \$4,860.58.

Background

On January 27, 2010, the employee was issued Permanent Change of Station (PCS) travel orders with a report date of August 2, 2010. The orders authorized him five days of fixed Temporary Quarters Subsistence Expense (TQSE) in the amount of \$1,042.50. The employee's orders indicated that an extension of TQSE could be granted upon request. On May 26, 2010, the employee's orders were amended granting him an additional 30 days of fixed TQSE. However, no amount of TQSE was specified on the amended orders. On October 29, 2010, the employee received a payment of \$6,255.00, which represented 30 days of TQSE. However, it was later determined that the amended orders dated May 26, 2010, which granted the employee an extension of fixed TQSE were erroneous.¹² Therefore, it was determined that the employee was only entitled to receive fixed TQSE for five days in the amount of \$1,042.50. As a result, the employee was overpaid \$5,212.50 (\$6,255.00 - \$1,042.50).

In the decision, the DOHA adjudicator waived \$351.92 of the erroneous TQSE payments because the employee provided documentation that he used this amount for its intended purpose. However, the adjudicator denied that remaining \$4,860.58 because there was no indication in the record that he used this amount for its intended purpose.

In his reconsideration request, the employee's position is that he was entitled to payment for the 30 additional days of TQSE. He contends that the amended orders dated May 26, 2010, granting the extension of fixed TQSE were not erroneous. He notes the pertinent dates of the sale, closing and settlement of his old and new houses. Accordingly to the time line, he states that he and his family clearly needed TQSE for the period June 28, 2010, through August 22, 2010. He notes that the original orders clearly state that TQSE extensions may be granted. He quotes the Joint Travel Regulation (JTR) and contends that DFAS incorrectly interpreted Chapter 5, paragraphs C5380-C5392. He states that the authorizing official's (AO) decision to extend the TQSE to 30 days was correct. He states that the AO made the decision based on the fact that he was purchasing new construction with a date of completion estimated in August 2010. He states that he did not actually use the TQSE prior to his orders being amended, his original orders authorized the extension of TQSE, and the AO had the authority under the JTR to

¹After coordination with the Per Diem, Travel and Transportation Allowance Committee (PDTATAC) (a joint DoD committee responsible for writing the travel regulations), the Defense Finance and Accounting Service (DFAS) determined that under paragraph C5384-A of the Joint Travel Regulations (JTR), once orders are executed, the number of days of fixed TQSE cannot be changed.

determine the time period for TQSE. The employee further states that DFAS erred in requesting documentation from him that the TQSE was used for the entire period he was paid TQSE. He states that receipts and supporting documentation are not required for TQSE payment and cites both the JTR and the Handbook for Civilian Permanent Duty Travel (PDT). He states that he and his family stayed with his sister during the moving period until it was close to beginning of the school year because he did not want to uproot his children unnecessarily. He and his family then stayed in a hotel. He states that he has already provided the lodging receipts to DFAS for the hotel. He states that in return for lodging with his sister, he incurred grocery expenses and restaurant bills. He states that if he had known that he needed to provide lodging receipts for the full TQSE period, he would have made different decisions. He cites a General Services Board of Contract Appeals (GSBCA) decision in 16803-RELO, March 20, 2006, in support of his position.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the government's claims 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 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. In this case, the overpayments resulted from administrative error, and there is no indication in the record that the error was caused by fraud, fault, misrepresentation or lack of good faith on the part of the employee.

In this case, the adjudicator properly waived the employee's debt in the amount of \$351.92 for the erroneous payment of TQSE to the extent that the employee used it for its intended purpose. The adjudicator focused on the fact that the employee was issued amended orders erroneously authorizing him additional days of TQSE. Under such circumstances, waiver may be appropriate for the amount the employee expends in reliance on those improper orders. The adjudicator looked at whether the erroneously paid TQSE was used for its intended purpose, *i.e.*, whether it was used to offset the expenses of lodging, food, and other necessities incurred while an employee and/or dependent occupied temporary lodging incident to a change of station. The adjudicator found that the \$351.92 was documented on the employee's lodging receipt for the hotel he stayed in from August 21, 2010, through August 24, 2010.

Although the employee states that under the JTR, he was not required to keep receipts, as explained above, under the waiver statute, we have held that waiver of repayment of the overpayment may be appropriate to the extent that the employee actually expended the erroneous funds in reliance on the erroneous authorization. *See* DOHA Claims Case No. 03040701 (April 15, 2003);³ and Comptroller General decision B-233826, Oct. 24, 1989. Here, the employee

³This decision was decided under 10 U.S.C. § 2774 because the applicant for waiver was a military member. However, the standards for waiver under 10 U.S.C. § 2774 and 5 U.S.C. § 5584 are the same.

actually expended \$351.92.⁴ In addition, we note that the purpose of the TQSE allowance is to partially reimburse an employee for reasonable subsistence expenses incurred when it is necessary for the employee and/or the employee's dependent(s) to occupy temporary lodging incident to a PCS move. Subsistence expenses are the expenses of lodging, food and other necessities incurred while an employee and/or dependent(s) occupy temporary lodging incident to a PCS. In this case, prior to moving his family into a hotel for the period August 21, 2010, through August 24, 2010, the employee and his family lived with his sister. Although the employee states that he bought groceries and ate out at restaurants while he resided with his sister, he has not provided any documentary evidence that he used the erroneous funds for their intended purpose during the period he resided with his sister.

Finally, the employee's position on reconsideration is inconsistent with the relief he sought. He states that he was entitled to receive the 30 days of TQSE under his amended orders. However, he had requested waiver of an indebtedness under 5 U.S.C. § 5584.⁵ A condition precedent to seeking waiver relief under 5 U.S.C. § 5584 is the erroneous payment of pay or allowances. *See* 5 U.S.C. § 5584(a) and DOHA Claims Case No. 2011-WV-032112.2 (May 25, 2011). In addition, we note that the establishment of a debt amount is a matter primarily for administrative determination, and our Office will ordinarily not question a determination in the absence of clear error.⁶ DOHA's authority in this matter pertains only to the availability of the equitable remedy of waiver. Waiver consideration at the appellate level in this Office generally does not include an adjudication of the validity of the debt. Moreover, our Office has no authority to adjudicate claims involving civilian employees' travel, transportation and relocation allowances. *See* 31 U.S.C. § 3702(a)(3). If the employee wishes to pursue such a claim, it must be submitted through DFAS to the Civilian Board of Contract Appeals (CBCA). *See* <http://www.cbca.gsa.gov>. In addition, the decision by the GSBICA, the predecessor to the CBCA, has no precedential value on our decision in this matter under the waiver statute.

Conclusion

The employee's request for relief is denied, and we affirm the August 29, 2012, decision.

⁴We note that the employee was informed by DFAS and our office that he needed to supply receipts for his lodging expenses during the period of overpayment. Although he suggests that he is unable to supply receipts because he was not required to keep them under the JTR, DFAS and our office included case law in correspondence to the employee which explained acceptable documentary support in lieu of receipts. *See* DOHA Claims Case No. 03040701, *supra*.

⁵*See Waiver/Remission of Indebtedness Application*, DD Form 2789, dated January 10, 2011.

⁶In addition, we note that in this case, DFAS consulted with the PDTATAC to reach its determination that the additional TQSE was not authorized under the JTR. The PDTATAC is the agency with the responsibility to administer the JTR. In this situation, great deference must be given to the regulation's interpretation by the agency which administers it, unless plainly erroneous or inconsistent with the words of the regulation. *See* DOHA Claims Case No. 99051701 (July 28, 1999).

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