

KEYWORDS: Waiver of Indebtedness

DIGEST: Due to an administrative error, an employee’s salary was miscalculated, causing her to be overpaid. She was unaware she was being overpaid until she was notified in February 2011. Under 5 U.S.C. § 5584, the amounts she was overpaid before notification may be waived. However, the amounts she received after notification may not be waived because she did not acquire title to the excess amounts and has a duty to return them to the government.

CASENO: 2012-WV-070306.2

DATE: 09/17/2012

DATE: September 17, 2012

)	
In Re:)	
[REDACTED])	Claims Case No. 2012-WV-070306.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Due to an administrative error, an employee’s salary was miscalculated, causing her to be overpaid. She was unaware she was being overpaid until she was notified in February 2011. Under 5 U.S.C. § 5584, the amounts she was overpaid before notification may be waived. However, the amounts she received after notification may not be waived because she did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

An employee requests reconsideration of the August 21, 2012, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-070306. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS), and waived \$1,751.20 of the \$2,069.60 that the employee owed the government due to

the overpayment of salary, but denied waiver of the \$318.40 balance of the indebtedness. The employee seeks waiver of \$159.20 of the remaining \$318.40 indebtedness.

Background

Effective August 29, 2010, the employee, a GS-9, step 9, with a salary of \$71,582.00 per annum, was converted to an excepted appointment as a GS-11, step 8, with a salary of \$77,040.00 per annum. However, the Defense Finance and Accounting Service (DFAS) later determined that the employee's salary should have been established as a GS-11, step 6, (\$72,876.00 per annum). Due to this administrative error, the employee became indebted to the United States in the amount of \$2,069.60 for erroneously salary payments she received from August 29, 2010, through February 26, 2011. On February 10, 2011, a *Notification of Personnel Action*, SF-50, was issued correcting the employee's salary.

In DOHA Claim No. 2012-WV-070306, the DOHA adjudicator concluded that the employee acted in good faith in accepting the overpayments which occurred during the period August 29, 2010, through January 29, 2011, and that all conditions necessary for waiver of this portion of the claim have been met. She further concluded that because an SF-50 was issued on February 10, 2011, correcting the employee's salary, it was not against equity and good conscience to deny waiver of the overpayments she received during the period January 30, 2011, through February 26, 2011.

In her request for reconsideration, the employee states that even though the SF-50 had an approval date of February 10, 2011, she did not possess information that would have allowed her to question the validity of the debt until her supervisor verbally notified her of the personnel action on February 16, 2011. Therefore, she states that she had no knowledge of the action that decreased her annual salary until after the pay period ended on February 12, 2011.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interest of the United States. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). The Standards for Waiver Determinations are found at Enclosure 4 of this Instruction. In relevant part, generally, persons who receive a payment erroneously from the government acquire no right to it and are bound in equity and good conscience to make restitution, no matter how careless the act of the government may have been. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. Waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

Generally, debts may be waived only when collection would be against equity and good

conscience and would not be in the best interests of the United States. *See* Instruction ¶ E4.1.2. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. In such instances, the recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E.4.1.4.

In the present case, the employee states that she became aware of the error when she was notified by her supervisor of the personnel action on February 16, 2011, after the pay period ended on February 12, 2011. Although she may not have received the SF-50 decreasing her salary prior to her supervisor's notification of the action, she did not receive her salary for the pay period ending February 12, 2011, until February 18, 2011. Since the employee became aware of the error concerning her salary prior to receiving her pay for the pay period ending February 12, 2012, and the pay period ending February 26, 2012, it is not against equity and good conscience to deny waiver of \$318.40.¹ Waiver is inappropriate if the employee is aware she is being overpaid when she receives the payment. *See* DOHA Claims Case No. 2011-WV-030802.2 (August 24, 2011) and DOHA Claims Case No. 2010-WV-010812.3 (June 11, 2010). Once the employee was notified on February 16, 2011, that she was being overpaid, she did not acquire title to any overpayments she received after that point, and has a duty to return the excess amounts to the government. *See* DOHA Claims Case 2009-WV-090804.2 (April 14, 2010).

Conclusion

The employee's request for relief is denied, and we affirm the August 21, 2011, decision to deny waiver in the amount of \$318.40. In accordance with ¶ E8.15 of the Instruction, 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

¹The employee was overpaid during the pay period ending February 12, 2011, in the amount of \$159.20. During the pay period ending February 26, 2011, she was also overpaid \$159.20. Therefore, the adjudicator denied waiver of the claim in the amount of \$318.40 (\$159.20 + \$159.20).

Natalie Lewis Bley
Member, Claims Appeals Board