

KEYWORDS: Waiver of Indebtedness

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.

CASENO: 2012-WV-062602.2

DATE: 08/23/2012

DATE: August 23, 2012

In Re:)
 [REDACTED]) Claims Case No. 2012-WV-062602.2
)
Claimant)

**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. Marine Corps requests reconsideration of the July 23, 2012, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims No. 2012-WV-062602. In that decision, DOHA waived \$76,095.38 of the \$82,877.82 that the employee owed the government due to the overpayment of living quarters allowance (LQA), but denied waiver of the \$6,782.44 balance of the indebtedness. The employee seeks waiver of the remaining \$6,782.44 of the indebtedness.

Background

On October 31, 2000, the employee, who was stationed overseas, separated from the military. On March 22, 2004, the employee, who was then living overseas, was appointed to a civilian position with the USMC. Effective May 11, 2008, the employee was reassigned to another duty station in the same country. As a result of his overseas reassignment, he was granted LQA. However, the USMC Civilian Human Resources Command (CHRO) later determined that the employee was not entitled to receive LQA because he was a local overseas hire and was not appointed within one year from the date of his separation from the military. Due to this administrative error, the employee was erroneously paid LQA, during the period June 8, 2008, through January 29, 2011, causing an overpayment of \$82,877.82.

On December 2, 2010, the employee was notified by CHRO of the error and overpayment of LQA. In DOHA Claim No. 2012-WV-062602, the DOHA adjudicator concluded that the employee acted in good faith in accepting the overpayment which occurred during the period June 8, 2008, through November 20, 2010, in the amount of \$76,095.38, and that all conditions for waiver of this portion of the claim had been met. She further concluded that because the employee was notified by CHRO of the overpayment by letter dated December 2, 2010, prior to receipt of the erroneous LQA payments during the period November 21, 2010, through January 29, 2011,¹ it was not against equity and good conscience to deny waiver of the \$6,782.44.

In his request for reconsideration, the employee states that although he was notified that he was no longer entitled to LQA, he still had to maintain a residence for his family until he could find another duty assignment. He states that his wife left her job of five years to follow him to his assignment because of the assurance he would receive LQA incentive. He states that the cost of obtaining a new residence, moving expenses and reassignment of his daughter to a new school were completely absorbed by his family. He states that from the time his LQA stopped in January 2011 until his family was able to move to the continental United States in August 2011, he expended over \$20,000.00 of their savings to maintain quarters, utilities, food and routine living expenses.

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 interests of the United States, and only when there is no indication of fraud,

¹The record reflects that the employee received his pay for the pay period November 21, 2010, through December 4, 2010, on December 10, 2010.

misrepresentation, fault, or lack of good faith on the part of the employee. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting a waiver. *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 ¶ E4.1.7.

In this case, the employee does not dispute the fact that he was notified by CHRO on December 2, 2010, that he was erroneously granted LQA. We have consistently held that an employee who was aware of an erroneous payment when it occurred was not free from fault and is not entitled to relief under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 2011-WV-072902.2 (March 8, 2012); Comptroller General decisions B-204410, Mar. 18, 1982; and B-204313, Mar. 8, 1982. Since the LQA paid prior to December 2, 2010, (\$76,095.38) was received by the employee in good faith, and with no knowledge that it was not correct, that portion of the claim was properly waived. In contrast, the subsequent LQA payments (\$6,782.44) were received after the employee was notified in December 2010 that he was ineligible for LQA and that the payment of LQA was not authorized. At that point, the employee should have returned the allowances or set them aside for eventual refund to the Government. *See* DOHA Claims Case No. 2011-WV-072902.2, *supra*.

While the employee's situation in this case is unfortunate, this does not change the fact that the employee knew he was no longer entitled to receive LQA as of December 2, 2010. In addition, the fact that repayment may cause financial hardship is not sufficient to authorized waiver. *See* DOHA Claims Case No. 02072501 (August 7, 2002). Further, any claims for entitlement to civilian pay, allowances, or travel and relocation reimbursement should be addressed to DFAS. Our Office has no authority to consider any legal claim to any of the entitlements.

Conclusion

The employee's request for relief is denied, and we affirm the July 19, 2012, decision to deny waiver in the amount of \$6,782.44.

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