

KEYWORDS: Waiver of Indebtedness

DIGEST: A debt that arises due to reconciliation of an employee’s living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

CASENO: 2012-WV-082001.2

DATE: 01/7/2013

DATE: January 7, 2013

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2012-WV-082001.2
)	
)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt that arises due to reconciliation of an employee’s living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

DECISION

A retired employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the September 28, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-082001.

Background

The employee worked for DoDEA in Japan and was entitled to receive LQA. From the pay period ending (PPE) March 9, 2002, through June 13, 2006, she was paid LQA in the amount of \$83,562.63. However, during the reconciliation of her account, DoDEA found that

the authorized amount was \$76,408.36. Therefore, the employee was overpaid LQA in the amount of \$7,154.27 (\$83,562.63 - \$76,408.36).

In addition, during the PPE September 15, 2006, through June 7, 2008, while the employee worked in Germany, she correctly received LQA. On June 13, 2008, the employee submitted a *Foreign Allowances Application, Grant and Report*, Standard Form (SF) 1190, requesting that her LQA be terminated effective June 14, 2008. Unfortunately, there was an administrative delay in processing the SF 1190, and the employee continued to receive LQA payments. The LQA payments should have terminated June 14, 2008, but continued through June 21, 2008. As a result, the employee was overpaid \$803.20.

As the DOHA adjudicator explained, generally, an overpayment in advances of LQA is not eligible for waiver consideration because the bi-weekly estimated advances, which are subject to reconciliation, are not erroneous when made. The adjudicator determined that the overpayment resulting from the reconciliation of the employee's LQA did not represent an erroneous payment, and could not be considered for waiver under the provisions of 5 U.S.C. § 5584. However, the adjudicator denied the overpayment resulting from the employee receiving LQA after June 13, 2008, because the employee should have at least questioned her entitlement to the full bi-weekly payment of LQA.

In the employee's reconsideration request, she states that it is the Department of Defense Dependent Schools' (DoDDS) responsibility to prove these debts, and they have not done so. She states that the yen rate in Japan makes it impossible to keep track of allowances. She also states that requests for five additional days of LQA on an employee's final departure date (in her case, June 14, 2008, through June 19, 2008) are usually granted. Therefore, when she received the additional \$803.20 in the PPE June 21, 2008, and discussed it with the Human Resources Representative, she assumed it was for the additional five days of LQA that she had requested. She states that it took the government eight years from the date of discovery of the original overpayment to notify her of the indebtedness. She states that during this time, the government had her current mailing address on file but made no effort to properly notify her of the alleged overpayment and her rights to dispute the alleged overpayment. She also states that she has been denied her due process rights and the assistance she would have been given as a bargaining unit employee. She believes that the agency was fully aware that she would have to contend without union representation after her retirement. In addition, she states that her credit record has been damaged and she has suffered financial hardship, anxiety and stress.

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. See DoD Instruction 1340.23 (Instruction) ¶ E4.1.2.

In order to be considered for waiver under 5 U.S.C. §5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1. In this case, the portion of the overpayment that resulted from the reconciliation of the employee's LQA cannot be considered for waiver because the LQA payments were proper when made. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923, and by implementing regulations issued by the Department of State. Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates that periodically a reconciliation is performed, after which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. Thus, we have held that 5 U.S.C. § 5584 does not apply to excess advances of LQA unless LQA payments were made erroneously. *See* DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999). Therefore, these payments were not erroneous at the time of disbursement. As the adjudicator explained in the appeal decision, this does not prohibit the employee from pursuing other avenues of relief. Under 5 U.S.C. § 5922(b), the head of the agency concerned has authority to waive a right of recovery if it is shown that the recovery would be against equity and good conscience or against the public interest.

As for the portion of the overpayment resulting from the erroneous payment of LQA after June 13, 2008, we find that the record reflects that the employee reasonably may have believed that she was entitled to an extension of five days of payment of LQA. The SF 1190 reflects that an extension was requested by the employee.¹ Therefore, we waive an additional five days of LQA in the amount of \$502.00. However, since the employee continued to receive LQA through June 21, 2008, and there is no evidence that she had a reasonable expectation of continuing to receive LQA past the additional five days from June 13, 2008, we deny the remaining \$301.20.²

As stated above, our decision in this matter does not preclude the employee from seeking other available remedies. The employee suggests that she may have been entitled to union representation prior to her retirement and cites a recent arbitrator's decision protecting union members against claims after they have retired and left DoDEA. However, an arbitrator's decision has no precedential value or binding authority on a DOHA waiver decision under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 03041512 (June 26, 2003).

The employee questions the validity of the debt which gave rise to the waiver request. Our authority in this matter pertains only to the availability of the equitable remedy of waiver. The validity of the debt is an issue separate from the waiver process. Moreover, our Office has no authority to adjudicate the validity of debts that arise from disputes involving civilian employee compensation. The validity of such debts must be resolved by the agency concerned, here DoDEA, and ultimately the Office of Personnel Management. *See* 31 U.S.C. § 3702(a)(2).

¹The record also reflects that Human Resources required further documentation from the employee to process her request. However, there is no indication that the employee received a request from Human Resources for the documentation.

²The employee received \$1,405.60 for 14 days of LQA for the period June 8, 2008, through June 21, 2008 (\$100.40 per day). Therefore, she received \$502.00 (\$100.40 x 5 days) of LQA from June 14, 2008, through June 18, 2008.

Finally, waiver is not available to relieve a financial hardship. *See* DOHA Claims Case No. 07021603 (February 27, 2007).

Conclusion

For the reasons stated above, we hereby waive an additional \$502.00. 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