

KEYWORDS: Waiver of Indebtedness

DIGEST: To be considered under the provisions of 5 U.S.C. § 5584(b)(3), an employee's waiver request must be received within three years of the discovery of the debt.

CASENO: 2012-WV-091003.2

DATE: 02/12/2013

DATE: February 12, 2013

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In Re:	)	
[REDACTED]	)	Claims Case No. 2012-WV-091003.2
Claimant	)	

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

To be considered under the provisions of 5 U.S.C. § 5584(b)(3), an employee's waiver request must be received within three years of the discovery of the debt.

**DECISION**

An employee of the U.S. Air Force requests reconsideration of the November 27, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-091003. In that decision, this Office decided that her application for waiver in the amount of \$834.19 could not be considered because it was not received within the 3-year statute of limitations.

**Background**

During the period February 13, 2005, through February 18, 2005, the employee performed temporary duty (TDY) travel. In connection with her TDY, the employee was authorized *per diem*, and the cost of her airline ticket was charged to a centrally billed account (CBA) because the employee did not have a government credit card. On February 22, 2005, the employee filed her travel voucher and claimed the cost of the airline ticket in the amount of \$814.19 plus a service fee of \$20.00. On March 1, 2005, the employee was paid \$1,337.44,

which included the cost of her airline ticket and the service fee, by electronic funds transfer (EFT). Since the government paid for the employee's airline ticket and its service fee using a CBA, the employee was erroneously paid \$834.19.

On April 5, 2005, the Defense Finance and Accounting Service (DFAS) discovered the overpayment and initiated a supplement to the *Travel Voucher*, DD Form 1351, to establish the travel debt for the airline ticket and the service fee. The employee asserts that she paid the money to the government in 2005 by check from her credit union account, the same account that the \$1,337.44 was deposited into by electronic funds transfer (EFT). However, the government has no record of the employee's satisfaction of the debt through check or through payroll deduction. The employee states that she first became aware of the debt on February 23, 2011, when she received an email from an Air Force financial analyst. On August 19, 2011, the employee submitted a request for waiver.

In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's application for waiver in the amount of \$834.19 could not be considered because it was not received within the 3-year statute of limitations.

In her request for reconsideration, the employee argues that she was not notified of the travel debt until February 23, 2011. She states that she did not know of the claim against her until then, so she had no reason to apply for waiver and had no knowledge of the 3-year time limit. She states that since the administrative office failed to make the proper notification to her, she should not be held accountable for their mistake. She states that she did not keep records from 2005, and the credit union will not release the records to her so that she could prove she paid the debt in 2005. She states that she has also requested documentation from the government reflecting that she did not pay the debt.

## Discussion

Our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we may waive a claim for an erroneous payment of pay or allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. However, we may not waive collection of an erroneous payment if the employee's application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. *See* 5 U.S.C. 5584(b)(3). Although the employee contends that she was not aware of the time limit, the employee's actual or imputed knowledge of the time limitation is irrelevant under 5 U.S.C. § 5584(b)(3). *See* DOHA Claims Case No. 2011-WV-041101.2 (December 20, 2011); and DOHA Claims Case No. 00080116 (October 11, 2000).<sup>1</sup> The 3-year period runs from the date that the error is discovered by an appropriate official, in this case April 5, 2005. Since the employee's written waiver application was not received until

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<sup>1</sup>This decision was decided under 10 U.S.C. § 2774 because the applicant for waiver was a service member. However, the standards for waiver under 10 U.S.C. § 2774 and 5 U.S.C. § 5584 are the same.

August 19, 2011, we have no authority to consider it. *See* DOHA Claims Case No. 06070704 (July 17, 2006); DOHA Claims Case No. 99050610 (May 27, 1999); and Comptroller General decision B-189170, July 5, 1977.

Even if we were able to consider the employee's request for waiver, we believe waiver would not be appropriate under the circumstances. The employee states that she knew she was overpaid in 2005 and took care of it by writing a check for the debt. We have consistently held that waiver is not appropriate when the employee knows or reasonably should know, that a payment is erroneous. *See* DOHA Claims Case No. 2012-WV-060101.2 (August 21, 2012); DOHA Claims Case No. 2011-WV-121301.2 (April 19, 2012); DOHA Claims Case No. 2011-WV-041102.2 (January 20, 2012); and DOHA Claims Case No. 09061102 (June 16, 2009).

Although the employee continues to assert that she paid the debt in 2005, she has not submitted any evidence to reflect its satisfaction. However, the record reflects that the government established a debt against the employee on April 5, 2005, and no collection action was processed. Specifically, the Air Force and DFAS both researched whether the debt was paid by the employee, and their research found no evidence of a collection of the debt. Further, the employee should make her request for documentation to the Air Force and DFAS, since they are the agencies which generated the research. 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, DOHA has no authority to adjudicate the validity of debts that arise from disputes involving civilian employees. If the employee wishes to dispute the validity of the debt by proving her settlement of it, she should contact her agency and DFAS.

### **Conclusion**

We affirm DOHA's appeal decision of November 27, 2012, that waiver of repayment of the employee's debt may not be considered due to the fact that the request was not received for more than three years after the discovery of the debt. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board