

DATE: May 8, 2013

In Re:

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Claimant

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Claims Case No. 2012-WV-102203.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Section 5584 of Title 5 of the United States Code, provides authority for waiving claims for 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.

DECISION

An employee of the U.S. Army Corps of Engineers requests reconsideration of the February 5, 2013, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-102203. In that decision, this Office declined waiver of overpayment in the amount of \$8,718.41.

Background

An employee of the U.S. Army Corps of Engineers was issued a SF-50, *Notification of Personnel Action*, converting her from Maintenance Worker, WG-04, step 4 (\$14.92 per hour) to a career conditional appointment, Maintenance Worker, WG-05, step 2 (\$19.47 per hour), effective March 29, 2009. However, it was later determined that her salary should have been established as \$15.58 per hour. Due to this administrative error, the employee's pay was miscalculated during the pay period March 29, 2009, through the pay period ending (PPE) April 10, 2010, causing an overpayment of \$8,718.41.

The employee contends that while the pay increase was greater than previous increases she had received, she reasonably believed that the pay increase was correct. This was due to her conversion to a career conditional position. She also stated that other staff members in positions

similar to her were receiving comparable rates of pay, so again she considered her assumption to be reasonable. The employee indicates that she did not receive her Leave and Earnings Statements (LES) and her SF-50, *Notification of Personnel Action*, listing her pay increase until well after the increase. When she did receive them, however, the grade was correct, and so she had every reason to assume the pay was correspondingly correct. The adjudicator determined that the increase was of such a significant amount that she had a duty to obtain an explanation for the increase from an appropriate official, and to set aside the funds in the event that repayment should be necessary.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee 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. In this case, the employee fully expected an increase in pay when she was converted to career conditional status. Initially, not receiving the LES or SF-50 with the pay increase, she inquired of her co-workers as to their salary rate. She was assured of the correctness of her increase when she learned their salaries were greater than hers, which certainly made sense due to the fact that they had seniority. Her pay increase at this point in her career seemed justified to be greater than previous increases due to her greatly increased responsibilities, unsupervised work, and the additional skills required of the position. When she did finally receive the LES and the SF-50 and found the grade and wage to be exactly the amount she was receiving, then any concern she had as to the correctness of the increase was settled.

Typically, if an employee has records which, if reviewed, would indicate overpayment, and the employee, after reviewing them, fails to take corrective action, then the employee is not without fault and waiver will not be granted. In this case, the employee had documents that confirmed the grade and rate of pay to be correct. This Office believes that the above facts support the finding that the employee was not at fault in accepting the overpayment. We find collection of the debt would be against equity and good conscience and not in the best interests of the United States. *See* DOHA Claims Case No. 08032801 (April 9, 2008).

Conclusion

The employee's request for reconsideration is granted, and the overpayment in the amount of \$8,718.41 is waived. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board