

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 January 2012. 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-101906.2

DATE: 02/28/2013

DATE: February 28, 2013

)	
In Re:)	
[REDACTED])	Claims Case No. 2012-WV-101906.2
)	
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 January 2012. 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 January 30, 2013, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-101906. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS) and waived \$496.00 of the \$2,340.80 that the employee owed the government due to the overpayment of salary, but denied waiver of the \$1,844.80 balance of the indebtedness.

Background

Effective August 14, 2011, the employee, a GS-07, with a salary of \$58,098.00 per annum, was promoted to a GS-09, step 6, with a salary of \$60,953.00 per annum. However, it was later determined that the employee's salary should have been established as a GS-09, step 4, with a salary of \$58,183.00 per annum. Due to this administrative error, the employee's salary was miscalculated during the period August 14, 2011, through January 14, 2012, causing an overpayment of \$545.60.

During the period January 15, 2012, through February 11, 2012, the employee was underpaid in the amount of \$326.40. In addition, due to an administrative error, during the pay period ending (PPE) February 25, 2012, the employee erroneously received a retroactive salary payment of \$2,121.60. Since the employee was underpaid in the amount of \$326.40, DFAS properly applied that amount to the \$2,121.60, reducing the overpayment to \$1,795.20. Therefore, the employee was overpaid \$2,340.80 (\$545.60 + \$1,795.20).

The DOHA adjudicator concluded that the employee acted in good faith in accepting the portion of the overpayment which occurred during the period August 14, 2011, through December 31, 2011, and that all conditions necessary for waiver of this portion of the claim have been met. She further concluded that since the employee became aware of the overpayment on January 10, 2012,¹ it was not against equity and good conscience to deny waiver of the portion of the overpayments she received during the period January 1, 2012, through February 25, 2012.

In her request for reconsideration, the employee states that she received an email from HR on January 10, 2012, to come to a meeting on January 13, 2012. She states that she was not aware she was being overpaid until the meeting on January 13, 2012. She attaches the email from HR to support her version of events. She further states that she was not aware of the erroneous retroactive payment she received in the PPE February 25, 2012, until she received the DOHA decision dated January 30, 2013. She states that the erroneous retroactive payment was not addressed at the January 13, 2012, meeting. In addition, she states that she was on temporary duty (TDY) during the period February 12, 2012, through February 25, 2012. During this time, she states that she was working long hours because of the critical mission of her TDY. She states that she did not have time to look at her bank statement or access her leave and earnings statements (LES). She states that she worked 66 hours of overtime during this period and assumed the extra amount in her pay was for the overtime. Finally, she states that she was a very new employee at the time and was not familiar with the DFAS system.

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. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006).

¹ In the employee's original waiver request, she states that she first became aware of the debt on January 10, 2012, when she received an email from Human Resources (HR).

In relevant part, generally, persons who erroneously receive a payment 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.

A waiver is usually 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 ¶ E4.1.4.

In the present case, the employee acknowledges that she was notified on January 10, 2013. In the email she attaches from HR, the HR specialist states the following:

We would like to meet with you to discuss the step you were put on. We have learned that it has been set incorrectly and need to explain what that means for you. Please let me know if you will be able to attend a group meeting on Friday, 13 Jan, at 9:00 . . .

Waiver is inappropriate if the employee is aware she is being overpaid when she receives the payment. *See* DOHA Claims Case No. 2012-WV-070306.2 (September 17, 2012) and DOHA Claims Case No. 2011-WV-030802.2 (August 24, 2011). Once the employee was notified on January 10, 2012, that her step was set incorrectly, 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 No. 2011-WV-030802.2, *supra*. However, even if we accept the employee's statement that she was not aware she was being overpaid until the meeting on January 13, 2012, she did not receive her pay for the period January 1, 2012, through January 14, 2012, until January 20, 2012.

As for the large retroactive payment the employee received in the PPE February 25, 2012, in the amount \$2,121.60, waiver is not appropriate when the employee knows she has been overpaid. We note that in the employee's original waiver request, she acknowledges receiving LES during the period of overpayment. Her LES for February 25, 2012, reflects under the heading, "Retroactive Earnings," that the employee received a large retroactive payment of regular pay in the amount of \$2,121.60. Although the employee states that she worked a significant amount of overtime during the PPE February 25, 2012, a review of her LES for the period reflects that she worked 80 hours of regular pay in the amount of \$2,230.40, 58 hours of overtime at the rate of \$38.16, for a total of \$2,472.54, and received gross pay in the amount of \$7,047.58 (net \$4,474.06). Since during the PPE February 11, 2012, the employee received gross pay in the amount of \$2,067.20 (net \$1,256.67), the size of the employee's salary in the PPE February 25, 2012, even with the overtime, should have caused her to examine her LES carefully and question the large retroactive payment, especially since she had been told that she had been overpaid. Under the circumstances, the employee does not acquire title to the overpayment, and has a duty to return the excess to the government. *See* DOHA Claims Case No. 09060901 (June 30, 2009).

Conclusion

The employee's request for relief is denied, and we affirm the January 30, 2013, decision to deny waiver in the amount of \$1,844.80. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense concerning the employee's request for waiver under 5 U.S.C. § 5584.

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