

DATE: September 5, 2013

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2012-WV-122002.2  
)  
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

To be considered under the provisions of 5 U.S.C. § 5584(b)(2), an employee's waiver request must be received within three years of the discovery of the debt.

**DECISION**

A former employee of the U.S. Army requests reconsideration of the July 31, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-122002. In that decision, this Office decided that his application for waiver in the amount of \$8,114.40 could not be considered because it was not received within the 3-year statute of limitations.

**Background**

On April 29, 2006, the employee separated from his position with the Army. On May 1, 2006, he accepted an appointment with the Department of State. As a result, he was no longer entitled to receive salary from the Army. However, due to an administrative error, he erroneously received salary from the Army during the period August 21, 2006, through September 30, 2006. Since he no longer worked for the Army, he was erroneously paid \$8,114.40.

On October 28, 2006, the Defense Finance and Accounting Service (DFAS) discovered the overpayment. By letter dated November 11, 2006, DFAS sent the employee a notification of indebtedness to his last known address.

In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's application for waiver in the amount of \$8,114.40 could not be considered because it was not received within the 3-year statute of limitations.

In his request for reconsideration, the employee states that he never received the letter dated November 11, 2006, from DFAS advising him of the overpayment. He requests confirmation that the letter was actually mailed to him and confirmation that it was received by him. He further states that he had been with his new employer at a new location for six months when the overpayment occurred. He also takes issue with the adjudicator's statement in the appeal decision concerning the fact that if he had reviewed his bank statements in 2006 he would have noticed the error. The employee requests that we provide authority for the requirement or statute concerning an individual's responsibility to review his personal bank statements. Finally, he contends that he should not be held responsible for the gross amount of the debt since he did not directly receive all the monies for which he is indebted.

### **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)(2). Although the employee states that he never received the letter dated November 11, 2006, from DFAS advising him of the overpayment, the 3-year period runs from the date that the error is discovered by an appropriate official, in this case October 2006.<sup>1</sup> Since the employee's written waiver application was not received until April 3, 2012, 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 separated from his position with the Army on April 29, 2006, and accepted an appointment with the Department of State on May 1, 2006. His bank statements for the period August 23, 2006, through December 20, 2006, reflect that he was receiving federal salary from DFAS as well as the Department of State. We have consistently held that a recipient of unexplained payments has a duty to at least question the reason for the payments and to set aside the funds in the event that repayment should be necessary. *See* DOHA Claims Case No. 09010501 (January 8, 2009); DOHA Claims Case No. 07103109 (November 15, 2007); and DOHA Claims Case No. 07101502 (October 19, 2007). Further, we have consistently held that an employee who has his pay directly deposited into his

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<sup>1</sup>The record contains a copy of DFAS's letter dated November 11, 2006, addressed to the employee at his last known address. We note that this address is the same as the address reflected on the employee's bank statement for the period November 22, 2006, through December 20, 2006.

bank account has a duty to monitor his bank account, verify his statements and question any discrepancies. *See* DOHA Claims Case No. 2012-WV-110902.2 (May 2, 2013); and DOHA Claims Case No. 02022603 (April 17, 2002). If a recipient of an overpayment is furnished with documentation or information which, if reviewed, would cause a reasonable person to be aware of or suspect the existence of an error, but fails to review such documents (LES and bank statements) or otherwise fails to take corrective action, waiver will generally be denied. *See* DOHA Claims Case No. 2011-WV-040402.2 (October 24, 2011); DOHA Claims Case No. 2010-WV-082601.2 (November 3, 2010); and DOHA Claims Case No. 02022603, *supra*.

Finally, we have consistently held that the employee is obligated to pay the gross amount of the overpayment. *See* DOHA Claims Case No. 07032202 (March 29, 2007). DFAS has advised us that the \$8,114.40 represents the gross amount of the overpayment which includes pay, all taxes, benefits and other deductions. The employee may contact DFAS to request copies of any records they hold that pertain to his debt.

### **Conclusion**

We affirm DOHA's appeal decision of July 31, 2013, 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: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board