

was paid WTA in the amount of \$5,625.73, but was only entitled to receive RITA in the amount of \$2,978.33, he was overpaid \$2,647.40.²

In his reconsideration request, the employee contends that the payment of WTA was erroneous and should be considered for waiver under 5 U.S.C. § 5584. He states that the WTA payment was part of a reimbursement payment for which an unreasonably long period of time had elapsed to process and disburse the payment, thus rendering the payment erroneous. He states that the payment of WTA was not received in 2010, but was received in 2011. In the alternative, he states that DFAS should simply honor what is reflected in his June 13, 2011, Travel Voucher, and the email message he received from DFAS, which indicates a zero balance.

Discussion

The RITA's purpose is to provide a transferred employee enough money, in addition to relocation benefits, to pay all income taxes due on the benefits and the allowance itself. *See* 5 U.S.C. § 5724b; 41 C.F.R. 302-17.1; and Volume 1 of the Joint Travel Regulations (JTR), paragraph C16001. The RITA consists of two parts, a WTA and a RITA. The amount of withholding taxes is deducted from the RITA to arrive at the net payment to an employee. *See* 41 C.F.R. § 302-17.7. If the calculation of the RITA results in a negative amount, the employee is obligated to repay this amount as a debt due the government. *See* 41 C.F.R. § 302-17.9.

Our authority in this case 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 have the authority to waive claims of erroneous overpayment of pay and 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. By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C. § 5584. If a payment is correct when made, we have no authority to relieve an employee of his obligation to repay the government. Based the facts in this record, the claim of the United States against the employee is not one "arising out of an erroneous payment of pay or allowances." *See* 5 U.S.C. § 5584(a). The employee was paid WTA based on his estimated tax liability. When the RITA calculation resulted in a negative amount, the employee was obligated to repay this amount. Therefore, we have no authority to consider the employee's debt for waiver. *See* DOHA Claims Case No. 97060228 (August 18, 1997) and Comptroller General decision B-248948, Sept. 16, 1992.

In this case, the employee received WTA in the total amount of \$5,625.73 in separate disbursements during 2010. However, the employee was only entitled to receive RITA in the amount of \$2,978.33. Therefore, under 41 C.F.R. § 302.17.9, the employee is obligated to repay \$2,647.40.³

²As noted by the DOHA adjudicator in the appeal decision, the employee's debt increased to \$2,685.80 with the addition of \$23.40 in interest fees and a \$15.00 administrative fee.

³We do note that the employee received an additional WTA payment of \$6,543.53 on January 18, 2011. However, DFAS has advised us that the employee filed his RITA claim which completely liquidated any resulting debt relating to that amount. This is reflected on the employee's travel voucher prepared on November 9, 2012.

Conclusion

The employee's request for waiver relief is denied, and we affirm the March 4, 2013, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, 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