

DATE: September 30, 2013

In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-012902.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee is aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment to the government.

DECISION

An employee of the Department of Defense requests reconsideration of the July 18, 2013, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-012902. In that case, this Office granted waiver of \$16,396.44 of the overpayment and denied waiver of \$1,086.32.

Background

The employee was issued numerous SF-50s, *Notification of Personnel Action*, during the period April 25, 2010, through October 22, 2011. These actions have been outlined in the decision. There was a small underpayment and a few small retroactive overpayments, but the debt resulted primarily from an erroneous increase in the employee's pay effective September 12, 2010. Even though the employee was subsequently assigned to a lower grade, his salary remained the same causing the error to continue to accrue through October 22, 2011, resulting in the overpayment of \$17,023.77. That amount was adjusted to account for an underpayment of \$312.77, and three retroactive overpayments totaling \$771.76. Thus, the final overpayment amount was \$17,482.76.

In the appeal decision, the adjudicator determined that the employee acted in good faith in accepting the overpayment, which resulted in his basic salary, overtime pay, danger pay, holiday pay, and law enforcement availability pay being miscalculated during the period September 12, 2010, through October 8, 2011. She determined that all conditions necessary for waiver of that portion of the claim had been met. She noted that the employee became aware of the overpayment on October 19, 2011. Therefore, she determined that the overpayment resulting from the employee's pay being miscalculated during the period October 9, 2011, through November 19, 2011, should be denied. This Office has consistently held that once an employee becomes aware he is receiving erroneous payments, waiver is not appropriate. As noted, this Office granted waiver of \$16,396.44 of the overpayment and denied waiver of \$1,086.32. The employee requests that this Office grant waiver of the remainder of the debt, and he requests that the debt be validated. He additionally requests that this Office coordinate with his Servicing Personnel Office and the Defense Finance and Accounting Service (DFAS).

Discussion

Title 5, United States Code, § 5584, 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. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

This Office must deny the employee's request to coordinate with his Servicing Personnel Office and DFAS. We must render decisions in accordance with Department of Defense Instruction 1340.23, *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances* (hereinafter Instruction) (February 14, 2006). We base our decisions on the written record, including the administrative report from the component concerned (usually DFAS) with input from the employee. Our Office does not have the authority to perform investigations. See DOHA Claims Case No. 2009-WV-090804.2 (April 14, 2010), and DOHA Claims Case No. 07111603 (November 30, 2007).

Validation of the debt is not a function that this Office performs. The employee should direct this request to DFAS. Any other questions or concerns that the employee has regarding the debt or the records supporting it should be directed to DFAS or to his supporting finance office. As stated previously, when an employee is aware he is receiving erroneous payments, waiver is not appropriate. On the employee's DD Form 2789, *Waiver/Remission of Indebtedness Application*, dated February 17, 2012, Block 12, the employee stated he became aware of the overpayment on October 19, 2011. Therefore, waiver after that time would be inappropriate. See DOHA Claims Case No. 2010-WV-061401.2 (July 22, 2010), DOHA Claims Case No. 09080702 (August 12, 2009), and DOHA Claims Case No. 07100905 (October 16, 2007).

Since the employee has provided no new evidence which would cause us to overrule or modify the appeal decision, we believe collection of the portion not previously waived would not be against equity and good conscience, nor contrary to the best interests of the United States.

Conclusion

The request for reconsideration is denied, and the decision of July 18, 2013, is affirmed. The employee is denied waiver of \$1,086.32. In accordance with the Instruction ¶ E8.15, this is the final administrative action 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

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board