

DATE: August 30, 2013

In Re:)

[REDACTED])

) Claims Case No. 2013-WV-020501.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of 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, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

An employee of the Department of Defense requests reconsideration of the July 5, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-020501. In that decision, DOHA denied waiver of the overpayment in the amount of \$136.38.

Background

In 2008 the employee was reassigned from the continental United States (CONUS) to Germany. The employee's travel orders issued on May 2, 2008, reflected that she and her dependents were entitled to *per diem* and that her dependent's travel was delayed. The employee arrived in Germany on May 12, 2008. The employee's husband arrived in Germany on July 29, 2008. When she filled out her travel voucher, she indicated that she was unaccompanied. On August 14, 2008, the employee was paid a total of \$272.10 for her travel expenses. However, the Defense Finance and Accounting Service (DFAS) later determined that the travel payment in the amount of \$272.10 erroneously included payment for the employee's dependent's travel.

DFAS determined that since her dependent did not travel with her, the employee was overpaid \$136.38.

The employee requested waiver of the overpayment, stating that she did not become aware of the overpayment until August 2011; this was her first permanent change of station (PCS) move; she never received any travel payment summaries; and prior to 2011, all her husband's travel to/from Germany was paid by her, not the government. DFAS subsequently denied her request for waiver. The DOHA adjudicator upheld DFAS's denial of the employee's waiver request based on DFAS's assertion that the employee had since been correctly paid (on March 26, 2012) for her dependent's travel to Germany in 2008 in the amount of \$339.87.

In her reconsideration request, the employee attaches email correspondence dated April 2, 2008, from an Overseas Allowance Human Resources Specialist informing the employee that even though her husband's travel will be delayed to Germany, she will be paid for his travel to Germany and his return to CONUS. The employee also states that she has been issued a debt notification for the payment she received on March 26, 2012, and has also filed a waiver request for this debt. DFAS has verified that the employee is in debt for this payment.

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, we believe the employee had no reason to question the payment she received in July 2008. She was told that she would be reimbursed for her husband's travel to Germany and his return to CONUS. From the record before us, it is not clear whether she was ever reimbursed for her husband's travel to Germany or his return to CONUS. In addition, the employee is now in debt for the payment she received on March 26, 2012, which was previously identified by DFAS as proper reimbursement for her husband's travel to Germany. Therefore, we find that 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. 97050801 (September 16, 1997).

Conclusion

For the reasons stated above, we hereby waive \$136.38. In accordance with the 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

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board