

DATE: February 23, 2015

In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-091305.2

**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 employee¹ of the Department of the Army requests reconsideration of the November 6, 2014, Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-091305. In that case, from a total debt of \$39,706.86, this Office granted waiver of \$1,423.76 of the overpayment and denied waiver of \$38,283.10.

Background

On July 7, 2009, the employee was appointed to a federal civilian position with the Department of the Army as an Intelligence Specialist (GMI Analyst). The employee's position should have been set as a GG-12, however, when the *Notification of Personnel Action*, SF-50, was issued on July 7, 2009, his position was erroneously reflected as a GG-13, step 1. This amounted to a salary of \$80,402.00 per annum, instead of a GG-12, step 1, with a salary of \$67,613.00 per annum. Due to this administrative error, the employee was overpaid basic salary in the amount of \$1,914.96 during the pay period ending (PPE) July 18, 2009, through August 29, 2009. The record further reflects that the employee was deployed to Iraq in September 2009 and was entitled to receive danger pay (DP), differential pay (DF), overtime pay (OT), and

¹ The employee is represented by an attorney, but the record does not contain a power of attorney or other document in which the employee designated the attorney to represent him as required by DoD Instruction 1340.23 ¶ E5.4. Accordingly, we are issuing this decision directly to the employee.

Sunday premium pay (SPP). The error in setting his salary resulted in the employee being overpaid basic salary, DP, DF, OT, and SPP in the total amount of \$37,686.78 during the period August 30, 2009, through May 21, 2011. Therefore, the employee was overpaid \$39,601.74.

The employee's initial SF-50, issued on July 7, 2009, appointed him as a GG-13, step 1, with an annual salary of \$80,402.00. The second SF-50 issued on July 22, 2009, gave the employee a miscellaneous pay adjustment due to his assignment from a GG-13, step 1, to an IA-03, with an annual salary of \$80,491.00. A corrected SF-50 was issued September 4, 2009, correcting his grade from a GG-13, step 1, to a GG-12, step 1, with an annual salary of \$67,613.00, effective July 7, 2009. The adjudicator determined that the employee may have reasonably believed that he was entitled to GG-13, step 1 pay through August 15, 2009, due to the date the corrected SF-50 was issued and waived \$1,423.76. All of the employee's Leave and Earnings Statements refer to the employee as either a GG-13 or an IA-03, and at no time did the employee's pay decline.

Discussion

The employee states that when he received the initial SF-50 grading him as a GG-13, step 1, he questioned his classification. He has provided documentation to show that his reliance on that classification was reasonable, particularly in light of his educational level and work experience. All of the Leave and Earnings Statements list the employee's grade as either GG-13 or IA-03. At the time the corrected SF-50 was issued, the employee was deploying for Iraq. The record contains travel documents, a DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*, which list the employee as a GS-12, dated November 22, 2010. This document would have put the employee on notice that he should have questioned his pay. A waiver generally is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside funds for eventual repayment to the government. See Department of Defense Instruction (hereinafter Instruction) 1340.23 ¶ E4.1.4, and DOHA Claim Case No. 2012-WV-110208.2 (December 13, 2012).

Despite any previous administrative errors, the employee would have been on notice on November 22, 2010, that he should have questioned his pay. The employee may have reasonably believed that he was entitled to the salary of a GG-13, step 1, until the date of the travel orders. Thus, the employee acted in good faith in accepting that portion of the overpayment he received from August 30, 2009, through November 20, 2010, in the amount of \$30,351.34.

Conclusion

The Board amends the appeal decision in this case to increase the remaining amount waived. Of the remaining overpayment amount of \$38,283.10, this Office waives an additional \$30,351.34, and denies waiver of \$7,931.76. According to the Instruction, 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///

Gregg A. Cervi
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board