

DATE: August 27, 2014

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In Re:

[REDACTED]

Claimant

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) Claims Case No. 2013-WV-100301.2  
)  
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Once an employee is notified in writing that he is not eligible to receive Living Quarters Allowance (LQA) and has been receiving the payments erroneously, it is not against equity and good conscience to deny the erroneous LQA payments received after notification.

**DECISION**

A civilian employee of the Marine Corps requests reconsideration of the July 24, 2014, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-100301. In that decision, this Office waived the government's claim in the amount of \$158,922.64, and denied waiver in the amount of \$17,439.94.

**Background**

A civilian employee of the Marine Corps located in Japan was paid LQA during the pay period ending (PPE) November 10, 2007, through the PPE January 29, 2011. The Defense Finance and Accounting Service (DFAS) later determined that he was not entitled to LQA because he was a local overseas hire. Due to this administrative error, the employee was overpaid \$176,362.58. In the appeal decision, this Office determined that the employee acted in good faith in accepting the overpayment received during the PPE November 10, 2007, through the PPE October 23, 2010. Therefore, our adjudicator waived the government's claim in the amount of \$158,922.64. However, because the employee was notified on November 5, 2010, by the Director, Civilian Human Resources Office (CHRO) that he was not eligible to receive LQA, and had been erroneously receiving LQA payments, it would not be against equity and good conscience to deny waiver of the LQA payments he received during the period October 24, 2010,

through January 29, 2011. Thus, waiver in the amount of \$17,439.94 was denied. In his request for reconsideration, the employee requests waiver of the remaining amount of the claim.

### **Discussion**

Title 5, U.S.C., § 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.

The employee noted on his waiver application that he received “final notification of the Command LQA Review on 20 Jan 2011.” However, the employee received a letter from CHRO, dated November 5, 2010, stating that the Director, CHRO “initially determined that [the employee was] not eligible to receive LQA payments and [has] been receiving these payments erroneously.”<sup>1</sup> Although the employee was given the right to appeal before a final decision was issued, he was clearly on notice as of November 5, 2010, that the LQA payments he was receiving were at least questionable. This Office has consistently held that when an employee is notified of the possibility that he is receiving erroneous payments, he should retain the erroneous funds for eventual return to the government or until the matter is resolved in his favor. Therefore, since the employee was notified in writing on November 5, 2010, by the Director, CHRO that he was not eligible to receive LQA payments and had been receiving them erroneously, it would not be against equity and good conscience to deny the erroneous LQA payments he received during the period October 24, 2010, through January 29, 2011. *See* DOHA Claims Case No. 2010-WV-101904.2 (December 27, 2012); DOHA Claims Case No. 2012-WV-062602.2 (August 23, 2012); DOHA Claims Case No. 2011-WV-072902.2 (March 8, 2012); and DOHA Claims Case No. 09080401 (August 11, 2009).

The employee does not provide additional evidence in his request for reconsideration. Rather, the employee contends that he has not been provided with acceptable answers as to why he is not entitled to LQA. In fact, the employee contends that the debt is not valid because he is entitled to LQA, and continues to be entitled to LQA. The employee requested a hearing from DFAS on the validity of the debt, and one was held. The debt was determined to be valid. For the purpose of the waiver process, we therefore accept that the employee’s debt is valid. Our role in this matter is limited to consideration of waiver under 5 U.S.C. § 5584. We have no authority over civilian employee entitlements. If the employee wishes to pursue his entitlement to LQA, he should contact the Office of Personnel Management.

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<sup>1</sup> This determination was based upon a review of the employee’s original LQA eligibility. The employee was notified that his LQA eligibility was identified for review by letter from CHRO, dated June 14, 2010.

## **Conclusion**

The request for reconsideration is denied, and the appeal decision dated July 24, 2014, is affirmed. 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.

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Catherine M. Engstrom  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board