



ambiguous and he honestly believed he was entitled to receive retention incentive continuously for five years. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of waiver of the claim. The adjudicator noted that the employee received SF-50s that clearly indicated that he was only entitled to receive retention incentive from April 29, 2007, through April 28, 2008.

In his reconsideration request, the employee states that management recommended waiver of the overpayment because it was caused by an administrative error and the *Retention Incentive Service Agreement* was ambiguous. He attaches an email dated August 12, 2011, from an attorney in the General Law Division in support of his waiver request. In the email, the attorney states that she recommends waiver in part because the overpayment was created by the government's administrative error.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of salary an employee received if collection would be against equity and good conscience and not in the best interests of the United States. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. Waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1.

The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting waiver. Waiver usually 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 the funds for eventual repayment to the government, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. We have consistently held that waiver will generally be denied when an employee is furnished with documentary evidence or information which, if reviewed, would cause a reasonable person to be aware or suspect the existence of an error, but he fails to review such documents or otherwise fails to take corrective action. *See* DOHA Claims Case No. 98112018 (January 11, 1999). This office cannot stress enough the importance of careful review by each employee of the pay data provided by the employing agency. This pay data is specifically provided to the employee in order for him to verify the accuracy of his salary. *Compare* DOHA Claims Case No. 2011-WV-121602.2 (March 15, 2012); and DOHA Claims Case No. 08032801 (April 9, 2008).

Although the employee continues to assert that the *Retention Incentive Service Agreement* was ambiguous, we see no ambiguity in the agreement. In this regard, the agreement states that in exchange for a recruitment bonus in the amount of \$17,110.00, the employee agrees to serve in his position with the Army for five years. In the agreement, he acknowledges that if his employment in the position is terminated during the period of the agreement at the

convenience of the government, he will be entitled to retain the bonus. He further acknowledges that if his employment in the position is terminated as a result of his poor performance or misconduct, he will be required to repay the recruitment bonus on a *pro rata* basis. There is nothing in the agreement stating that the employee was to continue receiving recruitment bonuses every year for five years. Even if we were to determine that the agreement was somewhat ambiguous, the employee's interpretation of that ambiguity was in complete conflict with the two SF-50s issued to him. The two SF-50s clearly reflect that he was only entitled to receive the retention incentive for one year. Although the employee states he relied on the fact that he continued to receive retention incentive after he notified the appropriate officials about his retention incentive terminating on April 29, 2008, there is nothing in the record reflecting what he told the officials and what they told him. Our decisions have consistently held that there is no basis for waiver based on reliance on incorrect advice unless the official(s) are identified and the employee's version of events is corroborated by pay and disbursing officials with what he told them and what they told him. *See* DOHA Claims Case No. 2011-WV-020101.2 (September 14, 2011).

Finally, regarding the attorney's suggestion that the government share responsibility for the indebtedness, there is no basis for apportioning fault under the waiver statute. An employee derives no entitlement from an administrative error made by the government. *See* DOHA Claims Case No. 09010501 (January 8, 2009).

### Conclusion

The employee's request for relief is denied, and we affirm the November 7, 2014, appeal decision. In accordance with the Instruction ¶ 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