

DATE: December 8, 2014

In Re:)
 [REDACTED]) Claims Case No. 2013-WV-092302.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee signed a *Relocation Incentive Agreement* with the U.S. Navy in April 2011, agreeing to remain in the Navy's employ through April 1, 2013, in exchange for relocation bonus payments paid to him in bi-weekly installments. The employee subsequently resigned and transferred to another federal agency on October 21, 2012, prior to termination of his service under the agreement. Waiver is granted under 5 U.S.C. § 5584 as to erroneous relocation bonus payments he received during the period April 8, 2012, through October 20, 2012. Since the employee received the payments in good faith and without knowledge that they were erroneous, collection of the erroneous payments would be against equity and good conscience, and not in the best interest of the United States. Waiver is denied as to the payments received after October 20, 2012, because by signing the agreement, the employee was on notice that the relocation bonus payments would not be authorized if he no longer remained in the employ of the Navy.

DECISION

A former employee of the U.S. Navy requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) appeal decision in DOHA Claim No. 2013-WV-092302, dated October 31, 2014. In that decision, DOHA determined that collection of the employee's debt in the amount of \$13,300.00 could not be considered for waiver and denied the remaining \$4,750.00.

Background

Effective April 2, 2008, the employee was reassigned overseas, and authorized relocation incentive payments under a three-year service agreement terminating on April 2, 2011. On April

2, 2008, he received an initial lump sum relocation incentive payment of \$20,588.00. On April 2, 2009, he was authorized a second lump sum relocation incentive payment of \$20,588.00, and on April 2, 2010, he received a third lump sum relocation incentive payment of \$20,588.00. On April 19, 2011, the employee executed a *Relocation Incentive Agreement (Final Year)*, entitling him to a 12-month continuation of the previously approved relocation bonus payments at the rate of 25 percent of his current basic pay payable in bi-weekly installments. In the agreement, the employee agreed to serve with the Navy through April 1, 2013. A *Notification of Personnel Action*, SF-50, was subsequently issued on April 26, 2011, authorizing the employee bi-weekly relocation incentive payments of \$950.00 for a service period of two years beginning April 1, 2011, through April 1, 2013.

On April 16, 2012, the Navy invited the employee to extend his overseas tour for an additional 24 months through April 1, 2015. On April 18, 2012, the employee declined the offer of extension and requested to register in the Priority Placement Program (PPP), since he had no return rights.

On October 21, 2012, the employee resigned from his position with the Navy and transferred to another federal agency outside of the Department of Defense. The Defense Finance and Accounting Service (DFAS) later determined that since an SF-50 and other appropriate documentation were not issued in April 2012 authorizing the employee continued receipt of his relocation bonus payments payable in bi-weekly installments, the employee was erroneously paid relocation bonus payments from April 8, 2012, through October 20, 2012, in the amount of \$13,300.00.¹

In addition, since the employee resigned from his position with the Navy and transferred to another agency on October 21, 2012, he was no longer entitled to receive bi-weekly relocation bonus payments from the Navy. However, due to an administrative error, the employee's pay record was not updated to reflect his resignation and transfer. As a result, the employee erroneously continued to be paid relocation bonus payments during the PPE November 3, 2012, through December 29, 2012, in the amount of \$4,750.00. As a result, the employee was overpaid a total of \$18,050.00.

In his request for reconsideration, the employee states that he was told to contact his Human Resources Office (HRO) after he declined to extend his overseas tour through April 1, 2015. He contacted his HRO and was instructed to prepare his resume, register on the PPP and apply for jobs on his own. Therefore, he states that he complied with the orders of his HRO and was selected for a position with another agency. As for the relocation bonus payments he received after transferring to another agency, he states that these erroneous payments were deposited electronically into his Navy Federal Credit Union account and he used a different credit union account for his banking. Therefore, he did not know that the payments were being deposited in his account at Navy Federal because he was not routinely checking it.

¹Specifically, DFAS advised our office that the employee correctly received relocation bonus payments through the pay period ending (PPE) April 7, 2012.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the government's claims 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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The standards for waiver determinations are set forth in Enclosure 4 to Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Under the terms of the statute and our implementing regulations, the appropriateness of waiver turns on the knowledge and conduct of the employee who received the erroneous payments, rather than the actions of the agency in making the payments. The principal test is whether an employee knew or reasonably should have known that an erroneous payment occurred and failed to bring the matter to the attention of the responsible officials.

In regard to the erroneous payments made to the employee during the period April 8, 2012, through October 20, 2012, the record contains no indication that the employee knew or had reason to know of the deficiencies in the documentation needed to continue his relocation bonus payments. Although DFAS has advised us that an SF-50 and other documentation had to be issued in April 2012 in order for the relocation bonus payments to be authorized through April 2013, we note that an SF-50 was issued on April 26, 2011, authorizing the bi-weekly relocation incentive payments of \$950.00 through April 1, 2013. Therefore, we believe the employee reasonably relied on the SF-50 issued in April 2011, and had no reason to question why a subsequent SF-50 was not issued in April 2012. The employee continued to work for the Navy through October 20, 2012. Therefore, we conclude that waiver of the erroneous relocation bonus payments received through October 20, 2012, in the amount of \$13,300.00, is appropriate. *See* Comptroller General decision B-272467, Dec. 13, 1996.

However, as of October 21, 2012, the employee no longer worked for the Navy. Although he may have had his salary from the Navy directly deposited into an account he was not routinely checking, we have consistently held that an employee has a duty to monitor his bank account, verify his statements and question any discrepancies. *See* DOHA Claims Case No. 2013-WV-030508.2 (September 17, 2013); DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011); DOHA Claims Case No. 07103109 (November 15, 2007); and DOHA Claims Case No. 07032202 (March 29, 2007). The employee's agreement with the Navy clearly reflects that the relocation payments were authorized to him based on his continued employment with the Navy. Once he was no longer employed by the Navy, he should have known that he was not entitled to receive them. The fact that the employee had his salary directly deposited into his bank account did not relieve him of the responsibility to verify his statements and question any discrepancies. *See* DOHA Claims Case No. 07032202, *supra*; and DOHA Claims Case No. 02030503 (March 14, 2002). Upon receipt of the deposits, the employee had a duty to question his entitlement to them and set them aside in the event repayment was necessary.

Conclusion

We hereby waive \$13,300.00 and deny waiver in the amount of \$4,750.00. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board