

DATE: December 16, 2014

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-122603.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver of an employee's debt is generally 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, even if the Government fails to act after notification.

**DECISION**

An employee of the United States Army requests reconsideration of an appeal decision dated November 7, 2014, by the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-122603. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying the employee's request that the Government waive the \$3,860.00 debt he incurred as a result of the erroneous payment of salary.

**Background**

The record contains a SF-50, *Notification of Personnel Action*, dated July 19, 2010, that was issued appointing the employee as an IT specialist, DE 03, with a duty location at a post in New Jersey. This SF-50 reflects the employee's basic pay was established as \$87,788.00, with a locality adjustment of \$25,212.00 (for his duty station in New Jersey) and a total annual salary of \$113,000.00. The record also contains a SF-50, issued on February 4, 2011, which changed the employee's duty station from New Jersey to a post in Maryland, effective January 16, 2011. This SF-50 reflects the employee's basic pay was \$87,788.00, with a locality adjustment of \$21,262.00 (for his duty station in Maryland) and a total annual salary of \$109,050.00. The record then reflects that due to an administrative error, an SF-50 issued on May 2, 2011, granting the employee a correct general adjustment in salary, erroneously changed his locality pay back to

the rate of the post in New Jersey (by then \$25,745.00), instead of his duty station in Maryland (\$21,262.00), effective April 24, 2011. As a result, the employee's salary was miscalculated during the period April 24, 2011, through April 7, 2012, causing an overpayment of \$3,860.00.

### **Discussion**

Section 5584 of title 5, United States Code, 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 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 states that he was unaware of the overpayment until his supervisor informed him in early May 2012. He acknowledges receiving leave and earnings statements (LES) and SF-50s during the period in question. However, he states he should not be expected to continually check his SF-50s without any indication that one has been issued. He states that he checked his SF-50 when he moved to the post in Maryland and verified that the locality pay adjustment was correct, 24.22% of his salary. The employee states that he finds it unreasonable to require an employee to "check the math" of official DFAS-issued documents to verify the accuracy of his salary. While the administrative error in locality pay occurred, his LES still reflected the amount of the adjustment for the period April 24, 2011, through April 7, 2012, to be 24.22%.

The employee argues he had no reason to verify his pay was correct by examining his SF-50 or his LES, and he was not aware that SF-50s were issued to effect changes in pay. As the adjudicator noted in the appeal decision, when the employee received a general adjustment in salary for a pay for performance increase, effective April 24, 2011, his basic pay increased \$1,855.00. His basic pay increased from \$87,788.00 to \$89,643.00. However, his total annual salary increased from \$109,050.00 to \$115,388.00, an increase of \$6,338.00. Therefore, the employee should have questioned such a large increase in pay.

The adjudicator stated that this Office has consistently held that when an employee who receives an overpayment is furnished with documentation or information which, if reviewed, would cause a reasonable person to be aware of or suspect the existence of an error, but fails to review such documents (*i.e.*, bank statements, SF-50, LES) or otherwise fails to take corrective action, waiver will generally be denied. *See* DOHA Claims Case No. 2011-WV-092801.2 (December 29, 2011), and DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011). The employee has provided no additional information in his request for reconsideration. Accordingly, the employee should have verified his entitlement with the appropriate official, and he had a duty to retain the funds for eventual repayment to the Government. *See* DOHA Claims Case No. 07103109 (November 15, 2007), and DOHA Claims Case No. 07110101 (November 8, 2007).

## Conclusion

The employee's request for reconsideration is denied, and we affirm the November 7, 2014, appeal decision to deny waiver in the amount of \$3,860.00. 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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Gregg A. Cervi  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board