

request. After further review of the case, DFAS recommended waiver of \$7,282.99, the portion of the overpayment the employee received for PPE March 13, 2010, through December 18, 2010. However, DFAS recommended denial of \$16,323.05, the portion of the overpayment the employee received for the period December 19, 2010, through May 7, 2011.¹ DFAS determined that the employee received notice of the error in his overtime rate when an SF-50 was issued on December 30, 2010, changing the employee's FLSA status to exempt effective November 4, 2010. In the appeal decision, the adjudicator followed DFAS's recommendation to waive \$7,282.99, and deny waiver of \$16,323.05. The adjudicator found that although the employee may not have received SF-50s directly from his human resources office while he was deployed, there was no evidence that the employee did not have electronic access to his personnel file. Therefore, the adjudicator determined that when the SF-50 was issued on December 30, 2010, the employee should have at least questioned the rate of his overtime pay as reflected on his leave and earnings statements (LES). The adjudicator found that if he had examined his LES, he would have discovered that the overtime rate he received significantly exceeded the \$37.56 rate clearly reflected in Block 6 (Basic/OT Rate) of the LES.

In the employee's reconsideration request, he attaches evidence reflecting that he did not have access to his electronic personnel file while he was deployed.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection 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 interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

In this case, the adjudicator denied the portion of the overpayment the employee received for the period December 19, 2010, through May 7, 2011, after the issuance of the SF-50 on December 30, 2010. However, the employee has presented evidence that he did not have access to his electronic personnel file and was not receiving SF-50s while he was deployed. Therefore, we waive an additional \$4,237.49, the portion of the remaining overpayment the employee received during the period December 19, 2010, through April 23, 2011. However, since the employee returned from his deployment on May 4, 2010, and had access to his pay records, we believe it would not be against equity and good conscience to deny the portion of the overpayment the employee received for the period April 24, 2011, through May 7, 2011, in the amount of \$12,085.56. In this regard, the employee's LES for the PPE May 7, 2011, reflects that he was erroneously paid retroactive payments of overtime for the PPE January 15, 2011, through April 23, 2011. In addition, the employee did not receive his salary for the PPE May 7, 2011, until May 19, 2011. Therefore, under the circumstances, if the employee had reviewed his pay records, including his SF-50s and LES, he would have been alerted to the fact that there was a change in his FLSA status and the overtime rate he was receiving was far greater than what was reflected on his LES. Under the circumstances, waiver is not appropriate for the portion of the

¹The employee received his pay for the period December 19, 2010, through January 1, 2011, on January 13, 2011.

overpayment the employee received after returning from his deployment and having access to his pay records. *See* DOHA Claims Case 07121701 (February 6, 2008); and DOHA Claims Case No. 07103006 (November 7, 2007).

Conclusion

For the reasons stated above, we hereby waive an additional \$4,237.49. In accordance with DoD Instruction 1340.23 ¶ 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board