

DATE: June 10, 2015

\_\_\_\_\_  
In Re: )  
          ) )  
          [REDACTED] ) Claims Case No. 2014-WV-081901.2  
          ) )  
Claimant )  
\_\_\_\_\_

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A debt that arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

**DECISION**

A retired employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the April 29, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-081901.

**Background**

The employee worked for DoDEA in Japan and was entitled to receive LQA. During the period March 27, 2005, through October 14, 2006, she was paid LQA in the amount of \$71,892.94. However, during the reconciliation of her account, DoDEA found that the authorized amount was \$68,214.93. Therefore, the employee was overpaid LQA in the amount of \$3,678.01.

As the DOHA adjudicator explained, generally, an overpayment in advances of LQA is not eligible for waiver consideration because the bi-weekly estimated advances, which are subject to reconciliation, are not erroneous when made. The adjudicator determined that the overpayment resulting from the reconciliation of the employee's LQA did not represent an erroneous payment, and could not be considered for waiver under the provisions of 5 U.S.C. § 5584.

In the employee's reconsideration request, she contends that it is against equity and good conscience and against the interest of the public to sustain DoDEA's determination based on an incomplete record. She states that our office does not have the complete file in her case. She states that she disagrees with the validity of the debt and has made multiple requests for a hearing on the matter. She also takes issue with the adjudicator's statement concerning the annual conversion rate for the yen. She states that the yen rate conversion takes place every pay day for which LQA is paid. She questions why our office wasted time reviewing her case if we had no authority to provide a solution. She states that this is a perfect example of fraud, waste and abuse.

### **Discussion**

Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes.<sup>1</sup> 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2.

In order to be considered for waiver under 5 U.S.C. §5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1. In this case, the overpayment that resulted from the reconciliation of the employee's LQA cannot be considered for waiver because the LQA payments were proper when made. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923, and by implementing regulations issued by the Department of State. Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates that periodically a reconciliation is performed, after which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. Thus, we have held that 5 U.S.C. § 5584 does not apply to excess advances of LQA unless LQA payments were made erroneously. *See* DOHA Claims Case No. 2012-WV-082001.2 (January 7, 2013); DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999). We have also held that the fact that the debt resulted merely because of a decline in exchange rates between the dollar and the local currency does not make an advance of LQA erroneous if it was not otherwise erroneous when paid. *See* DOHA Claims Case No. 02010906 (February 15, 2002).

The employee questions why our office wasted the time to review her case if we did not have the authority to offer her a resolution. Our office has adjudicated cases in which

---

<sup>1</sup>We note that other specific statutory authority for certain types of debts is available when we have no authority to consider the debts for waiver under 5 U.S.C. § 5584. For instance, a debt arising from a non-erroneous payment may be eligible for waiver under 5 U.S.C. § 3524 (Voluntary Separation Incentive Payment (VSIP) and Reemployment); 5 U.S.C. § 4108 (Government Employees Training Act); 5 U.S.C. § 5379 (Federal Student Loan Repayment); 5 U.S.C. § 5753 (Recruitment and Relocation Incentives); 5 U.S.C. §§5922-5923 (LQA); and 5 U.S.C. § 5948 (Physicians). *See* Chapter 8 of Volume 8 of DoD 7000.14-R, the Department of Defense Financial Management Regulation.

employees have been erroneously paid LQA, and has considered these cases for waiver under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 2013-WV-100301.2 (August 27, 2014) (employee was not entitled to LQA because he was a local overseas hire); DOHA Claims Case No. 2013-WV-041501.2 (August 13, 2013) (employee was not entitled to LQA because he was hired as a highly qualified expert); DOHA Claims Case No. 2012-WV-110208.2 (December 13, 2012) (employee was erroneously paid LQA after his entitlement was terminated); DOHA Claims Case No. 2010-WV-072301.2 (September 9, 2010) (employee erroneously continued to receive LQA at the full rate after she moved in with her military member husband who was receiving overseas housing allowance); and DOHA Claims Case No. 07080104 (August 9, 2007) (employee erroneously continued to receive LQA after moving into a guest house as temporary quarters). In some cases, we have partially allowed waiver of the erroneous payments of LQA. In DOHA Claims Case No. 2012-WV-082001.2, *supra*, we considered an employee's request for waiver of both a debt arising from a reconciliation of her LQA and a debt resulting from her receipt of erroneous payments of LQA after the termination of her entitlement.

As for the employee's insistence that we do not have a complete record in her case, our office adjudicates cases on the written record which is provided to us by the component concerned and the employee requesting waiver. We are not an investigative body and do not hold oral hearings or take testimony. In addition, the establishment of a debt is a matter primarily for administrative determination, and our office will ordinarily not question a determination in the absence of clear error. *See* DOHA Claims Case No. 2012-WV-051703.2 (October 18, 2012). Our authority in this matter pertains only to the availability of the equitable remedy of waiver. The validity of the debt is an issue separate from the waiver process. Moreover, our office has no authority to adjudicate the validity of debts that arise from disputes involving civilian employee compensation. The validity of such debts must be resolved by the agency concerned, here DoDEA, and ultimately the Office of Personnel Management. *See* 31 U.S.C. § 3702(a)(2).

As the adjudicator explained in the appeal decision, our decision in this case does not prohibit the employee from pursuing other avenues of relief. Under 5 U.S.C. § 5922(b), the head of the agency concerned has authority to waive a right of recovery if it is shown that the recovery would be against equity and good conscience or against the public interest. Therefore, DoDEA, in its discretion, has the ability to consider whether or not to waive their right of recovery in this matter.

## Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision of April 29, 2015. In accordance with the Instruction ¶ E8.15, this is the final administrative decision 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