

the period April 24, 2011, through April 6, 2013, the employee received salary in the amount of \$81,781.56 (\$71,114.40 in basic pay + \$10,667.16 in RI). Since the employee was entitled to receive retained pay during this period, she should have received salary in the amount of \$79,690.40. Therefore, since she was paid \$81,781.56, but was entitled to receive \$79,690.40, she was overpaid \$2,091.16

On April 8, 2013, an SF-50 was issued in an effort to cancel the employee's RI effective April 6, 2013. However, due to an administrative error, during the period April 7, 2013, through April 20, 2013, the employee erroneously received salary in the amount of \$1,794.92 (\$1,560.80 in basic pay + \$234.12 in RI). Since the employee was entitled to receive retained pay during this period, she should have received salary in the amount of \$1,605.60. Therefore, since she was paid \$1,794.92, but was entitled to receive \$1,605.60, she was overpaid \$189.32. Additionally, due to an administrative error, during the pay period ending (PPE) April 20, 2013, the employee erroneously received retroactive salary payments totaling \$5,166.72 (\$4,492.80 in basic pay and \$673.92 in RI). Therefore, the employee's indebtedness increased to \$7,447.20 (\$2,091.16 + \$189.32 + \$5,166.72).

The employee continued to erroneously receive RI instead of retained pay during the period April 21, 2013, through June 1, 2013, causing her to be overpaid \$567.96. Although the employee then received the correct salary during the period June 2, 2013, through June 15, 2013, she erroneously received a retroactive salary payment in the amount of \$268.80. In addition, during the PPE January 11, 2014, the employee erroneously received retroactive salary payments totaling \$3,993.60. Therefore, the employee's indebtedness increased to \$12,277.56 (\$7,447.20 + \$567.96 + \$268.80 + \$3,993.60).

In DOHA Claim No. 2014-WV-090207, the adjudicator waived \$2,091.16, the portion of the overpayment due to the employee's erroneous receipt of RI during the period April 24, 2011, through April 6, 2013. The adjudicator also waived the erroneous retroactive payments for basic pay the employee received during the PPE April 20, 2013, in the amount of \$4,492.80. Therefore, the adjudicator waived a total of \$6,583.96. However, the adjudicator denied waiver of \$5,693.60, which includes the overpayment in the amount of \$5,019.58 resulting from the employee's salary being miscalculated during the period April 7, 2013, through January 11, 2014, and the overpayment in the amount of \$673.92 resulting from the employee erroneously receiving retroactive RI payments in the PPE April 20, 2013. The adjudicator found that since the employee was notified on April 4, 2013, that the retention incentive payments were erroneous, waiver was not appropriate for any RI payments she subsequently received.

In her request for reconsideration, the employee agrees that the overpayment resulting from her continued receipt of RI during the period April 7, 2013, through January 11, 2014, should be denied. However, she states that the retroactive salary payments she received totaling \$3,993.60 in the PPE January 11, 2014, should be waived. She states that when she called her finance office she was advised that a desk audit had been completed and she was owed over \$3,000.00. She states that she was not aware that the retroactive payments were for RI because her leave and earnings statement (LES) did not indicate that the payments were issued retroactively for RI. She states that if she had known she was not entitled to the money, she would have set it aside for eventual repayment.

Discussion

The employee seeks waiver of the debt under 5 U.S.C. § 5584. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4.

In this case, the employee acknowledges that she was notified on April 4, 2013, that she was not entitled to receive RI. However, in her reconsideration request, she states that she was told by her finance office that she was owed over \$3,000.00, and there was nothing on her January 11, 2014, LES that reflected that the retroactive payments were for RI. However, by two notifications of indebtedness, one dated June 29, 2013, and the other dated July 27, 2013, the employee was on notice that she was erroneously overpaid during the PPE May 7, 2011, through June 1, 2013. The employee's LES for the PPE January 11, 2014, reflects that she was paid a total of \$3,993.60 in retroactive salary payments for the PPE May 7, 2011, through March 24, 2012. Since the employee was aware that she had received RI erroneously beginning in May 2011, and was on notice that she was in debt for the same period of time she received the retroactive payments, she should have known that these payments were questionable. Although she states that she was told she was entitled to receive an additional \$3,000.00, she gives no reason why she believed she was entitled to any additional payments for the period of time she had been overpaid. Once the employee was notified that she was overpaid, she did not acquire title to any overpayments she received after that point, and has a duty to return any excess amounts to the government. *See* DOHA Claims Case No. 2011-WV-121602.2 (March 15, 2012); and DOHA Claims Case No. 2010-WV-100816.3 (August 18, 2010). Under the circumstances, waiver is not appropriate.

Conclusion

The employee's request for relief is denied, and we affirm the April 28, 2015, decision to deny waiver in the amount of \$5,693.60. In accordance with 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board