

DATE: June 29, 2015

In Re:)	
[REDACTED])	Claims Case No. 2014-WV-100201.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver usually is 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 the funds for eventual repayment to the Government.

DECISION

An Army employee requests reconsideration of a decision dated May 29, 2015, of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-100201. In that decision, this Office waived \$4,948.31 of the Government's claim and denied \$5,194.44.

Background

The employee was issued a SF50, *Notification of Personnel Action*, on January 24, 2013, which granted the employee a retention incentive (RI) at the rate of 15% of her earned basic pay (effective August 28, 2011), with no termination date. However, it was later determined that the employee was entitled to only an annual RI. The employee was notified by memorandum, dated February 19, 2013, that her RI service agreement expired on August 28, 2012, and the terms and conditions under which the agreement was established were no longer valid as it was not reviewed annually for continuation. A SF50 was generated, approved March 5, 2013, which stated that her RI was terminated effective August 28, 2012. Due to this error, the employee became indebted in the amount of \$5,881.07 for the erroneous RI payments she received from the pay period ending (PPE) September 8, 2012, through February 23, 2013. Due to an additional administrative error, the employee continued to receive RI payments from PPE March 9, 2013, through June 29, 2013, causing an overpayment of \$4,261.68. Thus, the total claim against the employee is \$10,142.75.

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 from administrative error 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 adjudicator in the appeal decision determined that the employee may not have been aware that she received erroneous RI payments during the PPE September 8, 2012, through PPE January 26, 2013, and that all other conditions necessary for waiver had been met. Therefore, the adjudicator waived \$4,948.31. Since the employee was made aware of the erroneous payments on February 19, 2013, the adjudicator determined it was not against equity and good conscience to deny the erroneous RI payments she received from January 27, 2013, through June 29, 2013, in the amount of \$5,194.44.

In her request for reconsideration, the employee indicates that she does not object to the decision. However, she believes the erroneous payment of RI made to her through the date she was notified, February 19, 2013, should also be waived. She included the memorandum, dated February 19, 2013, that notified her of the erroneous payments and informed her that her entitlement to RI was being terminated.

It is a long-standing principle that amounts received prior to notification may generally be waived; whereas amounts received after notification may not be waived. We focus on the day when payment is received, rather than when the pay was earned. In this instance, the adjudicator properly granted waiver through January 26, 2013. The pay date for that pay period was February 7, 2013. The next pay period ended on February 9, 2013, but the pay date for that pay period was February 21, 2013. Since notification occurred on February 19, 2013, waiver of the pay received on February 21, 2013 is not proper. *See* DOHA Claims Case No. 2013-WV-021303.2 (August 8, 2013); DOHA Claims Case No. 2010-WV-010811.3 (May 24, 2010); Comp. Gen. decisions B-214740, Oct. 2, 1984, and B-191295, July 7, 1978.

Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated May 29, 2015. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board