

DATE: April 20, 2015

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2014-WV-090505.2  
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When an employee is aware or should be aware that she is receiving payments in excess of her entitlements, she does not acquire title to the excess amounts and has a duty to retain them for eventual repayment to the government.

**DECISION**

An employee of the U.S. Army requests reconsideration of the March 10, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-090505.

**Background**

The employee was employed by the Army and working overseas on a term appointment. Effective January 5, 2013, the employee's term appointment was terminated after she exercised her return rights from her overseas appointment. A *Notification of Personnel Action*, SF-50, was issued on December 30, 2012, reinstating the employee to her position of record as a Lead Education Service Specialist in Virginia. However, due to an administrative error, the employee's duty station was erroneously listed as Fort Lee, Virginia, instead of Fort Eustis, Virginia. As a result, her locality pay was erroneously established as \$12,243.00 per annum instead of \$10,526.00 per annum. Due to this error, the employee's salary was miscalculated during the period December 30, 2012, through October 19, 2013, causing her to be overpaid \$1,354.56.

In the appeal decision, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS) denial of the employee's request for waiver. The adjudicator found that the employee should have questioned why the SF-50 listed her duty station as Fort Lee since she was aware that her duty station was Fort Eustis. The adjudicator noted that the employee stated that she received another SF-50 after reporting to her duty station that correctly listed it as Fort Eustis. However, the adjudicator found nothing in the record to indicate that the employee was provided with a corrected SF-50. In fact, the adjudicator noted that after DOHA requested that the employee provide this SF-50, the employee provided a copy of the November 5, 2013, corrected SF-50, that was already in the file.

In her request for reconsideration, the employee states that she mistakenly sent the SF-50 issued on November 5, 2013, effective December 30, 2012, because she did not realize her personnel folder had been purged. She states that her actual start date at Fort Eustis was not until January 5, 2013. She states that when she arrived at Fort Eustis, she received an SF-50 with the correct duty station. However, she states that the form has now mysteriously disappeared. She states that she could not have possibly received an SF-50 assigning her to Fort Lee on December 30, 2012, because she was still in Qatar.

### **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. The fact that the debt arose due to administrative error does not entitle an employee to waiver or relieve her of the responsibility to verify the correctness of the payments she receives. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E4.1.3. Waiver 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, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4. Under circumstances in which an employee should have been aware of an error, we have held that when an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action, she is not without fault and waiver will be denied. *See* DOHA Claims Case No. 2011-WV-021401.2 (July 21, 2011); DOHA Claims Case No. 02030503 (March 14, 2002); and DOHA Claims Case No. 01110112 (November 29, 2001).

In this case, the employee has provided no additional information to warrant reversal of the adjudicator's decision to deny waiver. Although the employee states that the corrected SF-50 she received in January 2013 has mysteriously disappeared from her personnel folder, we note that the record contains the SF-52s, *Request for Personnel Actions*, for the period in question. There is no SF-52 requesting a correction to the employee's SF-50 erroneously listing her duty station as Fort Lee in January 2013. In fact, it was not until November 5, 2013, after the overpayment concluded, that an SF-52 was issued correcting the error. In addition, we note that an SF-52 was issued on January 14, 2013, erroneously listing the employee's duty station as Fort

Lee effective December 30, 2012. This contradicts the employee's insistence that she received a corrected SF-50 in January 2013. We further note that the employee has been a federal civilian employee since 1980 and should have recognized the importance of being paid for the locality for the correct duty station. Under the circumstances, the employee had information at her disposal that indicated an error in her record. She had a duty to bring the error to the attention of proper officials. Thus, we uphold the adjudicator's decision to deny waiver of the claim.

### **Conclusion**

The employee's request for relief is denied, and we affirm the March 10, 2015, appeal decision. 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

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board