

DATE: July 9, 2015

In Re:)
 [REDACTED]) Claims Case No. 2014-WV-121102.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment 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 that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

An employee of the U.S. Navy requests reconsideration of the June 5, 2015, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-121102. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remaining indebtedness.

Background

In August 2012 the employee was granted a career-conditional appointment as a Mechanical Engineer in the Navy's Acquisition Intern Program. On February 24, 2013, a *Notification of Personnel Action*, SF-50, promoted the employee, a GS-7, step 10, with a salary of \$54,373.00 per annum to a GS-9, step 5, with a salary of \$59,568.00 per annum. However, it was later determined that the employee's salary should have been established as a GS-9, step 3 (\$56,798.00 per annum). As a result, the employee was overpaid \$3,663.18 during the period February 24, 2013, through July 26, 2014.

The employee first became aware he was being overpaid during the week of January 20, 2014, when he had a discussion with a co-worker in the same program concerning pay scales.

He realized that his co-worker had a different step within the GS-9 grade. He immediately brought the matter to the attention of his chain of command in order to correct the discrepancy.

In the decision dated June 5, 2015, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS) recommendation to waive \$2,470.38, the portion of the erroneous salary payments the employee received for the period February 24, 2013, through January 11, 2014, before becoming aware of the error. The adjudicator denied waiver of the erroneous salary payments in the amount of \$1,192.80 the employee received for the period January 12, 2014, through July 26, 2014, since the employee became aware of the error on January 20, 2014.¹

In his request for reconsideration, the employee states that he did not receive official notification that he received erroneous salary payments until he received several SF-50s in July 2014.

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, even if the government fails to act after such notification. *See* Instruction ¶ E4.1.4.

In this case, the employee acknowledged on the *Waiver/Remission of Indebtedness Application*, DD Form 2789, that he first became aware of the erroneous payments during the week of January 20, 2014. He stated that he immediately contacted his chain of command after learning of the issue. However, in his reconsideration request, he states that he was not truly aware of the erroneous payments until he was officially notified in July 2014. Although the employee did not receive official notification of the overpayment until July 2014, he admittedly was aware of a discrepancy in his salary as early as January 20, 2014. While, we appreciate the fact that the employee notified proper officials of the issue and was persistent in his effort to correct the discrepancy, the fact remains that he was aware of the possible error in his salary as of January 20, 2014. Since he was aware of the error, he did not acquire title to the payments he subsequently received and had a duty to hold them for eventual repayment to the government. *See* DOHA Claims Case No. 09080401 (August 11, 2009); and DOHA Claims Case No. 08050201 (May 21, 2008).

¹The employee received his salary for the pay period January 12, 2014, through January 25, 2014, on January 31, 2014.

Conclusion

The employee's request for relief is denied, and we affirm the June 5, 2015, decision to deny waiver in the amount of \$1,192.80. 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: William S. Fields

William S. Fields
Member, Claims Appeals Board