

DATE: March 23, 2015

In Re:)

[REDACTED])

) Claims Case No. 2015-WV-020901.2

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

An employee of the Defense Intelligence Agency (DIA) requests reconsideration of the February 19, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-020901. In that decision, DOHA sustained the initial determination of DIA that an overpayment incurred by the employee was not eligible for waiver consideration under 5 U.S.C. § 5584.

Background

The employee was entitled to receive LQA. On April 23, 2013, the Finance and Accounting Service for DIA completed a reconciliation of the employee's LQA for the period December 30, 2008, through November 9, 2011, and determined that she was overpaid LQA in the amount of \$9,605.20. On June 4, 2013, DIA completed a second reconciliation of the employee's LQA and determined that she was overpaid \$2,815.63, instead of \$9,605.20. On June 5, 2013, the employee requested a hearing on the existence and/or amount of the debt. During the hearing process, it was determined that the debt amount was not accurate and an audit was again completed on the employee's account. The audit revealed that during the period December 30, 2008, through November 9, 2011, the employee was paid \$116,933.69 in LQA. However, she was only entitled to \$112,168.85 during this period. Therefore, she was overpaid \$4,764.84 (\$116,933.69 - \$112,168.85). Since the employee has repaid \$2,103.47 of this

amount, the hearing officer concluded that she was only indebted the remaining amount of \$2,661.37 (\$4,764.84 - \$2,103.47), not \$2,815.63.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith. In this case, the record does not indicate that the employee was erroneously overpaid. The debt before us involves the overpayment of LQA payments. Such payments are governed by 5 U.S.C. §§ 5922-5923, and by implementing regulations issued by the Department of State.¹ Under 5 U.S.C. § 5922(b), the 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. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowances. *See* DOHA Claims Case No. 07082101 (August 28, 2007).

As the Hearing Officer during the employee's audit stated, it was regrettable that the employee was notified of three different debt amounts; however, the final reconciliation completed in June 2013 shows that the principal debt amount of \$2,661.37 is valid. The employee contends that this is a financial hardship for her. The Department of Defense Instruction (hereinafter Instruction) 1340.23 ¶ E4.1.7, states that financial hardship is not a factor for consideration in determining whether a waiver is appropriate. The employee claims she is entitled to Temporary Quarters Subsistence Expense (TQSE). If the employee wishes to make a claim, she should contact her agency. As the adjudicator noted, if the employee wishes to appeal a decision of her agency on an entitlement, it should be directed to the Office of Personnel Management (OPM) under 31 U.S.C. § 3702(a)(2).

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision of February 19, 2005. In accordance with the Instruction ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

¹ *See* particularly paragraph 113.4 of the Department of State's Standardized Regulations (DSSR) for civilian employees living overseas regarding recovery of unpaid balances of LQA upon transfer. A current version is found at the Department of State, Office of Allowances web site. The Defense Travel Management Office web page for DoD travel regulations currently has a link to the Office of Allowances at <http://www.defensetravel.dod.mil/site/travelreg.cfm>.

///Original Signed///

William S. Fields
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board