

DATE: September 15, 2015

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-042801.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When an employee knows, or reasonably should know, that a payment is erroneous, they have a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government.

**DECISION**

An employee of the U.S. Air Force (USAF) has requested reconsideration of the July 20, 2015, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2015-WV-042801. In that decision, this Office waived the government's claim in the amount of \$4,610.84, and denied waiver of \$630.00.

**Background**

The employee performed temporary duty for 55 days in Qatar in 2008 and 45 days in Kuwait in 2009. For the two periods combined, he was overpaid Post Differential (PD) and Imminent Danger Pay (IDP) in the adjusted amount of \$5,240.84. All of the overpayments were paid retroactively, but all except the last two payments were paid while the employee was overseas or very soon after his return to the United States. The last two payments totaled \$630.00. While the employee left his deployed location December 3, 2009, the last two payments (\$112.48 and \$517.52) were not received until May 8, 2010, and September 11, 2010. Because the employee was regularly paid PD and IDP retroactively, and may not have realized that those allowances were miscalculated, the adjudicator waived \$4,610.84.<sup>1</sup> However, she

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<sup>1</sup> All of the figures associated with the amount that was waived were very carefully and specifically laid out for the employee in the decision dated July 20, 2015. It is not necessary to repeat the information to that specificity here.

denied waiver of \$630.00 because the last two payments arrived so long after the employee's TDY ended that he should have questioned his entitlement to them. The employee requests reconsideration of this portion of the decision. He submits evidence he believes shows that he did question appropriate officials, and therefore, the amount should be waived.

### **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 interest of the United States, provided there is 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 employee submitted a series of email messages to prove that he contacted appropriate officials regarding the overpayments in May and September 2010. One of first emails the employee received was on April 2, 2010, in which he was informed that he had a debt of \$495.04 for PD. The point of notifying an appropriate official is not the notification itself, but the explanation and reasonable assurance that the payment is correct. The DoD Instruction 1340.23 [hereinafter Instruction] ¶ E4.1.5 states:

A waiver is generally not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay and allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside funds in the event that repayment should be necessary.

In this case, when the employee notified appropriate officials regarding his confusion with his pay calculations for his PD for his most recent deployment to Kuwait, he was informed in April 2010 that he had a debt for PD.

Thus, prior to the May and September 2010 PD payments, the employee questioned the calculations regarding his PD and was informed of his debt. If this series of emails had been in the original file, the adjudicator might have waived less of the debt in the decision of July 20, 2015. Once this Office makes a decision to waive a debt to the government, we do not reverse our decision. However, the employee was clearly on notice at that time that he had a debt to the government and any future payments should be questioned.

This Office waived the PD overpayment to which the employee was not entitled when he had questions regarding the calculation. Then when he spoke to an appropriate official and the official informed him that he was already indebted for PD, he became more indebted with the May and September 2010 overpayments for PD in the amount of \$630.00. For this reason, it is not against equity and good conscience, or contrary to the best interests of the United States, to deny waiver of the overpayment of \$630.00. *See* DOHA Claims Case No. 2014-WV-072910.2 (March 10, 2015), DOHA Claims Case No. 2012-WV-030904.2 (August 23, 2012), and DOHA Claims Case No. 07100101 (October 11, 2007).

## Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated July 20, 2015. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Catherine M. Engstrom  
Member, Claims Appeals Board

*///Original Signed///*

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Natalie Lewis Bley  
Member, Claims Appeals Board