

DATE: December 10, 2015

In Re:)
 [REDACTED]) Claims Case No. 2015-WV-031003.2
)
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 Department of Defense requests reconsideration of the October 6, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-031003.

Background

The employee worked overseas in Germany and was entitled to receive LQA. During the pay period ending (PPE) August 13, 2011, through August 24, 2013, the employee was paid LQA in the amount of \$135,505.58. However, during the reconciliation of his account, it was determined that the authorized amount was \$106,402.59. Therefore, the employee was overpaid LQA in the amount of \$29,102.99.

As the DOHA adjudicator explained, generally, an overpayment in advances of LQA is not eligible for waiver consideration because the bi-weekly estimated advances, which are subject to reconciliation, are not erroneous when made. The adjudicator determined that the overpayment resulting from the reconciliation of the employee's LQA did not represent an erroneous payment, and could not be considered for waiver under the provisions of 5 U.S.C.

§ 5584. The adjudicator also noted that even if she could consider the debt for waiver under 5 U.S.C. § 5584, waiver would not be appropriate under the circumstances. She noted that the employee sold his home and started renting an apartment in August 2011. However, the employee continued to receive the same amount of LQA. The adjudicator noted that the employee should have expected a significant decrease in the amount of LQA he received when he started his apartment rental.

In the employee's reconsideration request, he contends that the overpayment did not result from reconciliation of his LQA account. He states that the payments of LQA were erroneous and not proper when made. He states that the office he had worked in since July 2005 was scheduled to close in September 2011. As a result, he took a position in a different office, sold his apartment and rented a new apartment effective August 1, 2011. He states that he informed his Human Resources Specialist of this. He states that she told him that since he was starting a new position at a different post, he would have to submit a new *Foreign Allowances Application, Grant and Report*, SF-1190, and a *Living Quarters Allowance Annual/Interim Expenditures Worksheet*, DSSR 130. He states that he submitted the paperwork on August 29, 2011. He states that his Human Resources Specialist said that it would be processed. However, he states that unbeknownst to him, the LQA paperwork was never processed. He states that the LQA payments he subsequently received were applied for and granted based on his prior employment and post where he no longer worked and which no longer existed. He believes that this was the cause of the LQA overpayments and they were therefore erroneous payments. In addition, he states that he disagrees with the adjudicator's determination that even if DOHA could consider the payments, his waiver request would be denied because he should know or suspected that he was being overpaid. He states that he was monitoring his leave and earnings statements (LEs) and reported any changes to his Human Resources Specialist.

Discussion

Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes. 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2.

In this case, the employee was not erroneously overpaid. In order to be considered for waiver under 5 U.S.C. §5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.5. In this case, the overpayment that resulted from the reconciliation of the employee's LQA cannot be considered for waiver because the LQA payments were proper when made. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923, and by implementing regulations issued by the Department of State. The statute, 5 U.S.C. § 5922(b), anticipates that periodically a reconciliation of the employee's LQA account is performed, after which the employee is required to repay the amount by which the amount he received exceeds his allowable expenses. Thus, we have held that 5 U.S.C. § 5584 does not apply to the excess of

LQA received unless the LQA payments were made erroneously. *See* DOHA Claims Case No. 2012-WV-082001.2 (January 7, 2013); DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999).

As the adjudicator explained in the appeal decision, this does not prohibit the employee from pursuing other avenues of relief. Under 5 U.S.C. § 5922(b), the head of the agency concerned has authority to waive a right of recovery if it is shown that the recovery would be against equity and good conscience or against the public interest.

Finally, even if we were able to consider the employee's request for waiver under the waiver statute, waiver is not appropriate under the circumstances. In this regard, the employee sold his home and leased an apartment on August 1, 2011. As noted by the adjudicator, during the PPE July 2, 2011 through July 30, 2011, prior to the employee signing the lease, he received LQA bi-weekly in the approximate amount of \$2,492.00. However, after signing his lease, he continued to receive LQA bi-weekly in the approximate amount of \$2,492.00. Therefore, after the employee sold his home, rented an apartment and his housing expenses subsequently decreased significantly, he reasonably should have expected a comparable decrease in the amount of LQA he was receiving.

Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision of October 6, 2015. In accordance with the Instruction ¶ E8.15, this is the final administrative decision 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board