

DATE: August 26, 2015

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In Re: )  
          [REDACTED] )     Claims Case No. 2015-WV-050101.2  
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Claimant                            )  

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When an employee is furnished with documentation from her employing agency regarding her entitlements, she has a duty to review such documentation to verify she is receiving her proper entitlements.

**DECISION**

An employee of the U.S. Army requests reconsideration of the June 18, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-050101. In that decision, this Office denied waiver of an overpayment of basic salary in the amount of \$1,581.12.

**Background**

A *Notification of Personnel Action*, SF-50, issued on July 16, 2013, granted the employee an excepted appointment from an Instructor, AD-00, step 00 (\$45,833.00 per annum) to a Senior Instructor, AD-00, step 00 (\$48,833.00 per annum), for a period not to exceed (NTE) November 6, 2013, effective July 14, 2013. However, the SF-50 erroneously reflected that the employee was entitled to \$3,000.00 in locality pay, causing her salary to be set at \$48,833.00 per annum instead of remaining at \$45,833.00 per annum. As a result of this administrative error, the employee's salary was miscalculated during the pay period ending (PPE) July 27, 2013, through PPE March 8, 2014, causing an overpayment of \$1,581.12.

The employee contended in her reply to the administrative report of the Defense Finance and Accounting Service (DFAS) that when the overpayment began, government employees were subject to furlough. At the same time, she stated that she had medical issues which necessitated

medical treatment which caused her to be on sick leave. Immediately after her sick leave was over, she stated that the furlough began. She stated that when she returned to work her workplace had connectivity issues and employees could not access the internet for most of 2013. She contends that employees had to go to the post library and wait in line for a computer. During this period of time she stated she was contending with physical therapy and a new baby. The employee also stated that repaying the overpayment would be a financial hardship.

### **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 interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with 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.

While an administrative error may have occurred, this Office has long held that the waiver statute does not automatically apply to relieve the debts of all employees who, through no fault of their own, have received erroneous payments from the government. Waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. Additionally, we have consistently held that the United States is not liable for the erroneous actions of its officers, agents, or employees even though committed in the performance of their official duties. *See* DOHA Claims Case No. 07030509 (March 14, 2007), and DOHA Claims Case No. 02032201 (April 2, 2002).

As the statutory language indicates, whether to grant waiver under 5 U.S.C. § 5584, is not decided simply as a matter of right whenever an employee innocently receives salary to which she is not entitled, but has to be decided on the principles of equity and fairness under the circumstances presented in each case. Although the employee suffered hardship from her medical treatment and the employee furlough, and was not aware of the error despite the existence of SF-50s, these are not bases for granting a waiver request. Our Office has consistently held when an employee is furnished documentation from her employing agency regarding her entitlements, she has a duty to review such documentation to verify she is receiving her proper entitlement. While the employee stated that her workplace had connectivity problems, she stated in Block 17 of her DD Form 2789, *Waiver/ Remission of Indebtedness Application*, that she did receive her Leave and Earnings Statement (LES). Had she reviewed her LES at any point during the overpayment period, she would have seen the \$3,000.00 listed separately as locality pay.

We have consistently held that if a recipient of an overpayment is furnished with documentary records or information, which, if reviewed, would cause a reasonable person to be aware of or suspect the existence of an error, but fails to review such documents (SF-50 or LES) or otherwise fails to take corrective action, waiver will generally be denied. We cannot stress too highly the importance of a careful review by each employee of their SF-50s and LES provided

by their employing agency. These documents are issued to employees in order that they can verify the accuracy of their pay. Since there is no indication that the employee questioned the \$3,000.00 unexplained locality pay as shown on her LES and SF-50 and the sudden unexplained increase in her salary, we believe collection of the overpayment would not be against equity and good conscience and would be in the best interests of the United States. *See* DOHA Claims Case No. 2014-WV-090505.2 (April 20, 2015), DOHA Claims Case No. 2011-WV-020101.2 (September 14, 2011), DOHA Claims Case No. 07030509 (March 14, 2007), and DOHA Claims Case No. 02032201 (April 2, 2002).

Regarding the employee's statement that repayment of the overpayment will cause a financial hardship, DoD Instruction 1340.23 ¶ E4.1.7 states that financial hardship is not a factor for consideration in determining whether a waiver is appropriate. While financial hardship does not provide a basis for waiver, the employee may contact DFAS to request a more favorable repayment plan; however, this is at the discretion of DFAS.

### **Conclusion**

The employee's request for reconsideration is denied, and we affirm the June 18, 2015, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative decision of the Department of Defense in this matter.

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Gregg A. Cervi  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board