



same program concerning pay scales. He realized that his co-worker had a different step within the GS-9 grade. He states that he immediately brought the matter to the attention of his chain of command in a good faith effort to correct the discrepancy.

In the decision dated September 15, 2015, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS) recommendation to waive \$2,365.44, the portion of the erroneous salary payments the employee received for the period February 24, 2013, through January 11, 2014, before he became aware of the error. The adjudicator denied waiver of the erroneous salary payments 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.<sup>1</sup>

In his request for reconsideration, the employee states that although he was informed on January 31, 2014, by a union official that human resources had reviewed the intern program employees' pay accounts and found that anyone placed in a step 5 was being overpaid, the employee notes that the review was done by human resources in Keyport, Washington, not by human resources in Mechanicsburg, Pennsylvania. The employee states that he was considered an employee of Mechanicsburg, not Keystone. He states that the email from the union official was provided to him for information purposes and should not be considered an official determination that he was overpaid. He 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 stated 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. In addition, the email sent by the union official after the employee brought the discrepancy to the attention of appropriate

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

officials, specifically informed the employee that if he was receiving the salary of a step 3, he was receiving the correct pay, but if he was receiving the salary of a step 5, he was being overpaid and owed the government a debt. The union official was relaying the results of the review conducted by Keyport Human Resources of the intern employees' salaries. Although the employee may have been considered an employee of Mechanicsburg, the record reflects that he had been advised that Keyport Human Resources had volunteered to go over his SF-50s with him to ensure he was receiving the correct pay. Therefore, although the corrective SF-50s were not issued until July 2014, the employee 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. 2014-WV-121102.2 (July 9, 2015); DOHA Claims Case No. 09080401 (August 11, 2009); and DOHA Claims Case No. 08050201 (May 21, 2008).

### **Conclusion**

The employee's request for relief is denied, and we affirm the September 15, 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

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Gregg A. Cervi

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Member, Claims Appeals Board