

DATE: October 29, 2015

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2015-WV-060205.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment 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 that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

An employee of the U.S. Air Force requests reconsideration of the September 16, 2015, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-060205.

Background

The employee was employed by the Air Force as a Management Analyst. On May 20, 2008, the employee completed a *Telework Request/Agreement (Alternative Workplace Arrangement (AWA))* requesting her work location change from California to Texas. On May 21, 2008, her Command approved her request. Since the employee performed her duties from her Texas alternate work location (AWL), her locality pay should have been based on Texas instead of California. However, due to an administrative error, the employee erroneously received locality pay based on California.

As a result, the employee's pay was miscalculated during the pay period ending (PPE) June 21, 2008, through June 18, 2011, causing an overpayment of \$26,606.80. However, when

the employee's records were updated to reflect that her locality pay was based on Texas not California, and when the Defense Finance and Accounting Service (DFAS) established the employee's debt, DFAS then discovered that the employee's base pay was miscalculated during the period August 14, 2010, through August 13, 2011, causing her to be underpaid \$1,478.40. As a result, DFAS advised us that they issued the employee a credit in the amount of \$89.60 per pay period during the period July 2, 2011, through August 13, 2011, in the total amount of \$358.40. This credit reduced the employee's debt to \$26,248.40 (\$26,606.80 - \$358.40). Therefore, the employee was still due a credit of \$1,120.00 (\$1,478.40 - \$358.40) for the miscalculation of her base pay for the period August 14, 2010, through June 18, 2011. The record further shows that during the PPE August 27, 2011, the Defense Finance and Accounting Service (DFAS) advised us that the employee was erroneously issued retroactive payments totaling \$1,478.40 for the period August 14, 2010, through August 13, 2011. In this regard, since the employee was already credited the amount of \$358.40 for the period July 2, 2011, through August 13, 2011, she erroneously received \$358.40 in retroactive payments. Therefore, the employee's indebtedness increased to \$26,606.80 (\$26,248.40 + \$358.40). In addition, DFAS advised us that instead of reducing the employee's debt by the amount of \$1,120.00, which the employee was due as a result of the incorrect calculation of her base pay, DFAS paid it to the employee as part of the \$1,478.20 retroactive payment. Therefore, the gross amount of the claim against the employee was \$27,726.80 (\$26,606.80 + \$1,120.00).

In the decision dated September 16, 2015, the DOHA adjudicator followed DFAS's recommendation to waive \$3,563.52 of the government's claim and deny waiver of \$24,163.28. In reaching her decision to grant waiver in the amount of \$3,563.52, the overpayment occurring during the PPE June 21, 2008, through November 30, 2008, the adjudicator noted that the employee's AWA she signed on May 20, 2008, was temporary and lasted until November 30, 2008. The adjudicator further noted that the AWA stated the following:

Duty Station and Alternative Workplace: The organization and employee agree that the employee's official duty station is Edwards AFB, CA and that the employee's approved alternative work place is 441 5th Street, Dyess AFB, Texas 79607-1244. NOTE: All pay, leave and travel entitlements are based on the official duty station.

Therefore, the adjudicator determined that since the employee's AWA was temporary and specifically authorized her pay entitlements based on California, the employee acted in good faith in accepting the overpayment in the amount of \$3,563.52. The adjudicator further determined that the overpayment resulting from the employee's locality pay being miscalculated during the period December 1, 2008, through June 18, 2011,¹ should be denied. The adjudicator based her denial of waiver of this portion of the claim on the fact that the employee acknowledged that her duty station changed to Texas when she was preparing her second AWA, and was informed that the change would impact her pay and entitlements. The adjudicator noted that the employee's second and third AWAs listed her duty station and alternative workplace as Dyess AFB, Texas, and her home as New Braufels, Texas. Therefore, the adjudicator concluded

¹The overpayment resulting from the employee's locality pay being miscalculated ended on June 18, 2011. However, as previously explained the employee received a retroactive payment of \$1,478.40 during the PPE August 27, 2011, which should have been applied to the employee's debt.

that the employee reasonably should have been aware that she was receiving locality pay based on a location where she did not perform her duties. The employee should have questioned the proper pay officials concerning her entitlements. In addition, in addressing the \$1,478.40 retroactive payment issued in the PPE August 27, 2011, the adjudicator was advised by DFAS that for some unknown reason this payment was issued to the employee erroneously. Further, there was nothing in the record reflecting why the employee received the retroactive payment. In this regard, the record did not contain the employee's leave and earnings statement (LES) for the PPE August 27, 2011. Based on the record evidence, the adjudicator concluded that since there was no indication that the employee questioned the \$1,478.40 retroactive payment she received during the PPE August 27, 2011, this amount was not appropriate for waiver.

In her request for reconsideration, the employee takes issue with the denial of the portion of the overpayment she received retroactively during the PPE August 27, 2011, in the amount of \$1,478.40. The employee includes email correspondence and other pay documentation that was not included in the record at the time the adjudicator issued her decision. The employee states that on July 8, 2011 when she received her LES, she noticed that her basic pay in Block 7 was adjusted from \$88,238.00 to \$78,045.00, that a deduction in the amount of \$1,464.08 was made from retroactive earnings and that several other adjustments were made to her benefits. She states that the Remarks section of her LES listed the reasons for the changes as a basic pay change, an indebtedness collected from retroactive earnings and/or adjusted deductions and retroactive personnel data processed. She states that she immediately called her Human Resources Specialist and informed her that her locality rate still reflected California but her basic pay rate had been changed and did not match her personnel records. The employee attaches a *Notification of Personnel Action*, SF-50, issued and effective January 3, 2010, listing her basic pay rate as \$69,391.00 per annum, when her LES reflected her basic pay rate as \$68,365.00. The employee continued to pursue the matter with the appropriate officials. On August 23, 2011, her Human Resources Specialist confirmed by email that the employee was underpaid basic pay and that her basic pay was corrected from \$68,365.00 to \$69,391.00 effective January 3, 2010. By email dated August 25, 2011, the employee questioned if the prior pay periods would be readjusted to reflect the higher, correct basic pay. On August 25, 2011, the Human Resources Specialist advised the employee by email that her basic pay would be correctly adjusted and that she would see the adjustment in her paycheck in the future.

Discussion

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.

In this case, the employee has provided additional information to warrant reversal of the adjudicator's decision to deny waiver of a portion of the retroactive payment she received on the PPE August 27, 2011. The employee did question her basic pay rate after being advised in writing of her indebtedness due to the miscalculation of her locality pay. She was then told by

her Human Resources Specialist that her basic pay had, in fact, been calculated incorrectly and should be increased retroactively to reflect a basic pay rate of \$69,391.00 per annum. Under the circumstances, we believe that waiver of an additional \$1,120.00 is appropriate. In this regard, although the employee was issued a retroactive payment of \$1,478.40 in the PPE August 27, 2011, resulting from the adjustment of her basic pay rate for the period August 14, 2010, through August 13, 2011, she had already been credited the amount of \$358.40, for the period July 2, 2011, through August 13, 2011. To the extent that the amount of \$358.40 was already credited to the employee's pay account, waiver of this amount would result in a windfall to the employee. *See* DOHA Claims Case No. 00073101 (August 21, 2000); and DOHA Claims Case No. 99041204 (April 28, 1999). Therefore, we waive an additional \$1,120.00 (\$1,478.40 - \$358.40).

Conclusion

We hereby waive an additional \$1,120.00. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board