

DATE: February 18, 2016

In Re:)
) [REDACTED]) Claims Case No. 2015-WV-083103.2
))
))

**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. Army requests reconsideration of the December 15, 2015, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-083103. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remaining indebtedness.

Background

On October 6, 2011, the employee was appointed as a GS-10, step 00, with a salary of \$86,391.00 per annum. However, it was later determined that the employee's salary should have been established as a GS-10, step 10, with a salary of \$67,931.00 per annum. As a result, the employee was overpaid \$45,644.93 during the pay period ending (PPE) October 22, 2011, through January 11, 2014. On January 10, 2014, a *Notification of Personnel Action*, SF-50, was issued adjusting the employee's salary from \$86,391.00 per annum to \$76,015.00 per annum. However, it was later determined that her salary should have been established as \$68,608.00 per annum. As a result, the employee was overpaid \$3,422.95 during the PPE January 25, 2014, through June 14, 2014, which increased her indebtedness to \$49,067.88 (\$45,644.93 + \$3,422.95).

In June 2014 and July 2014 multiple corrective SF-50s were issued in an attempt to correct the employee's salary. However, due to an administrative error, during the PPE June 28, 2014, through July 12, 2014, the employee was underpaid \$981.83. The Defense Finance and Accounting Service (DFAS) properly applied the \$981.83 to the overpayment reducing the employee's debt to \$48,086.05 (\$49,067.88 - \$981.83).

On July 23, 2014, an SF-50 was issued correctly setting the employee's salary at \$68,608.00 per annum, retroactive to January 12, 2014. However, due to an administrative error, the employee erroneously received a retroactive salary payment in the amount of \$6,518.55 for the period January 25, 2014, through July 12, 2014, during the PPE July 26, 2014. This caused the employee's indebtedness to increase to \$54,604.60 (\$48,086.05 + \$6,518.55).

In the decision dated December 15, 2015, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS) recommendation to waive \$47,856.86, the portion of the erroneous salary payments the employee received during the PPE October 22, 2011, through April 19, 2014, before she became aware of the error. The adjudicator denied waiver of the erroneous salary payments the employee received for the PPE May 3, 2014, through September 6, 2014, in the amount of \$229.19 and the erroneous retroactive salary payment she received during the PPE July 26, 2014, in the amount of \$6,518.55. Therefore, the adjudicator denied waiver of \$6,747.74 (\$229.19 + \$6,518.55), since the employee became aware of the error on May 8, 2014.¹ In addition, the adjudicator found that since there was no evidence in the record that the employee questioned the retroactive payment in the amount of \$6,518.55 she received, waiver was not appropriate.

In her request for reconsideration, the employee states that she did question her leave and earnings statements (LEs) for June and July 2014. She states that it was just assumed that she did not question the retroactive payment when she was in continuous contact with pay officials concerning her pay. She states that she was told to be patient while corrections were being made to her pay account.

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.

¹The employee received her salary for the pay period April 19, 2014, through May 3, 2014, on May 15, 2014.

In this case, in her original waiver request, the employee acknowledged that she became aware of an issue with her salary in January 2014 when she noticed that her hourly, overtime and annual salary had changed on her LESs. She stated that she immediately notified her payroll office and continued to follow up. She further acknowledged that she received an Information Paper dated May 8, 2014, informing her of the incorrect setting of her pay upon her appointment on October 11, 2011, from the Civilian Human Resources Agency (CHRA). She attached the letter to her waiver request. The Information Paper informed her that her pay at her appointment should have been set at \$67,931.00 per annum. It also informed her that when pay adjustments were made to her salary in January 2014 it was discovered that her pay was set incorrectly and her pay was adjusted from \$86,391.00 per annum to \$76,015.00. However, it was also explained that the adjusted rate of pay was still incorrect and her pay should have been set at \$68,608.00 per annum. Finally, she was told that she would be responsible for the debt once notified by DFAS. Therefore, although the employee may have continued to question her salary as reflected on her LESs, she was aware of the error in her salary as of May 8, 2014. Since she was aware of the error, she did not acquire title to the payments she subsequently received and had a duty to hold them for eventual repayment to the government. *See* DOHA Claims Case No. 2015-WV-060503.2 (October 29, 2015); DOHA Claims Case No. 2014-WV-121102.2 (July 9, 2015); and DOHA Claims Case No. 09080401 (August 11, 2009).

Conclusion

The employee's request for relief is denied, and we affirm the December 15, 2015, decision to deny waiver in the amount of \$6,747.74. In accordance with Instruction ¶ 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board