

DATE: March 1, 2016

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In Re:	)	
[REDACTED]	)	Claims Case No. 2015-WV-110206.2
Claimant	)	

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**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 January 29, 2016, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-110206. 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**

Effective January 2, 2011, a *Notification of Personnel Action*, SF-50, granted the employee a temporary promotion to the grade of a YF-801, step 3, with an annual salary of \$109,371.00, not to exceed April 9, 2011. The employee subsequently received his proper salary during the period January 2, 2011, through April 9, 2011. On May 13, 2011, an SF-50 was issued reducing the employee to the lower grade of YF-02, step 00, with an annual salary of \$104,662.00. However, the Defense Finance and Accounting Service (DFAS) later determined that the employee's annual salary should have been set at \$103,181.00, instead of \$104,662.00. As a result, the employee was overpaid \$5,614.26 during the pay period ending (PPE) April 23, 2011, through December 29, 2012. During the period December 20, 2012, through February 23,

2013, the employee received his proper salary. In March 2013 multiple SF-50s were issued in an attempt to correct the employee's salary. As a result of these corrective actions, the employee was underpaid \$113.60 during the period February 24, 2013, through March 9, 2013. DFAS applied this amount to the overpayment of \$5,614.26, reducing the employee's indebtedness to \$5,500.66. In addition, as a result of the issuance of the corrective SF-50s, the employee erroneously received a retroactive salary payment in the amount of \$568.00 in the PPE March 23, 2013. Therefore, the employee's indebtedness increased to \$6,068.66 (\$5,500.66 + \$568.00).

In DOHA Claim No. 2015-WV-110206, the adjudicator waived \$5,500.66, the portion of the overpayment the employee received during the PPE April 23, 2011, through March 9, 2013. The adjudicator denied waiver of the erroneous retroactive payment in the amount of \$568.00 the employee received in the PPE March 23, 2013, because the employee received notification that he was being overpaid by email dated February 25, 2013. Since the employee was on notice that he had been overpaid prior to receiving the erroneous retroactive payment, the adjudicator found that he should have at least questioned the payment.

In his request for reconsideration, the employee states that he did question the overpayment of \$568.00 when he noticed it on his leave and earnings statement (LES) dated March 23, 2013. He states that he contacted his Human Resources office by telephone and was advised that he was entitled to the retroactive payment. He states that at that time, he had not received his official debt notification letter from DFAS. Therefore, he states that he did not know how much his debt was. He further states that he was notified by DFAS on several occasions of overpayments, and his debt kept increasing.

### **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. *See* Instruction ¶ E4.1.4.

In this case, the employee acknowledges that he was notified on February 25, 2013, that he had been overpaid. However, the employee states that he questioned the retroactive payment of \$568.00 he received in the PPE March 23, 2013, and was advised that he was entitled to the payment. Although the employee may have been given erroneous advice, we note that the employee was notified on March 23, 2013, by letter from DFAS that he had been overpaid \$568.00, the same amount as the retroactive payment reflected on his March 23, 2013, LES. Since he did not receive his salary for the PPE March 23, 2013, until April 4, 2013, he should have continued to question his entitlement to the retroactive payment, especially given that he

had been notified he had been overpaid and that he received a debt notification letter reflecting a new debt in the amount of \$568.00, the same amount as the retroactive payment reflected on his LES. Once the employee was notified that he was overpaid, he did not acquire title to any overpayments he received after that point, and has a duty to return any excess amounts to the government. *See* DOHA Claims Case No. 2014-WV-090207.2 (June 11, 2015); and DOHA Claims Case No. 09082002 (August 27, 2009). Under the circumstances, waiver is not appropriate.

### **Conclusion**

The employee's request for relief is denied, and we affirm the January 29, 2016, decision to deny waiver in the amount of \$568.00. 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: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board