

DATE: May 3, 2016

In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-122817.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate if an employee is aware she is being overpaid. Once the employee is notified she is being overpaid, she does not acquire title to any overpayments she receives after that point, and has a duty to return the excess amounts to the government.

DECISION

An employee of the United States Air Force requests reconsideration of a March 21, 2016, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-122817. In that decision this Office waived \$33,756.31 of the government's claim and denied waiver of \$906.44.

Background

An SF-50, *Notification of Personnel Action*, was issued and effective December 1, 2013, reassigning the employee from a Foreign Affairs Specialist, GS-13, step 3 (\$94,969.00 per annum) at the Pentagon, to a Protocol Specialist, GS-9, step 00 (\$76,452.00 per annum) at a base in the United Kingdom. The employee was granted pay retention on the SF-50. The Defense Finance and Accounting Service (DFAS) advised that the employee was not entitled to receive retained pay. As a result of this administrative error, during the pay period ending (PPE) December 14, 2013, through the PPE May 2, 2015, the employee's regular salary and post allowance (PA) were miscalculated, causing her to be overpaid (\$34,662.75).

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.

The adjudicator determined that the employee reasonably may not have been aware that her regular salary and PA were being miscalculated, and therefore waived \$33,756.31 of the overpayment received during the PPE December 14, 2013, through PPE April 18, 2015. The adjudicator determined that since the employee was notified on May 6, 2015, that she was erroneously receiving retained pay, waiver of collection her excess salary and PA for PPE May 2, 2015, should be denied.

The employee requests reconsideration of that denial and contends that she had no time to effect the change in her salary. She states that during that week she worked numerous hours of compensatory overtime in addition to her regular shift. She states that the finance center was unable to immediately assist her as they were performing system maintenance. She states that she has no experience working in finance; and due to staff turnovers and absences at her finance center, no one had the expertise to correct the problem immediately. She states she had to spend countless hours on the phone with the DFAS Customer Service to receive the correct debt amount and advice on waiver. Due to all of these events, the employee believes the remaining amount should be waived.

The issue is not when the employee was able to correct the problem, or even learn of the specificity of the debt. Once an employee is notified she is being overpaid, she does not acquire title to any overpayments she receives after that point and has a duty to return the excess amounts to the government. *See* DOHA Claims Case No. 07100201 (October 10, 2007), and DOHA Claims Case No. 05090603 (September 14, 2005).

While an administrative error did occur, our Office has consistently held that the waiver statute does not apply automatically 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. If it were merely a matter of right, then virtually all erroneous payments made by the government to employees would be excused from repayment. *See* Department of Defense Instruction [hereinafter Instruction] 1340.23 ¶ E4.1.1, *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances*, February 14, 2006.

Conclusion

The employee's request for reconsideration is denied, and the decision dated March 21, 2016, is affirmed. In accordance with the Instruction, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board