

DATE: December 29, 2016

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In Re: )  
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          [REDACTED] ) Claims Case No. 2015-WV-111901.2  
          ) )  
Claimant )  
\_\_\_\_\_

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A debt that arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

When an employee on leave without pay (LWOP) receives a payment, he has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government.

**DECISION**

An employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the November 30, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-111901. In that decision, DOHA determined that a portion of the debt in the amount of \$1,075.10 could not be considered for waiver under 5 U.S.C. § 5584, and denied waiver of the remaining \$764.78.

**Background**

The employee was employed by DoDEA overseas and was entitled to receive LQA. During the pay period ending (PPE) September 22, 2012, through March 23, 2013, the employee was paid LQA in the amount of \$7,286.81. However, during the reconciliation of his account, it was determined that the authorized amount was \$6,090.91. Therefore, after the application of \$120.80 in credits, the employee was overpaid LQA in the amount of \$1,075.10.

Beginning in the PPE April 6, 2013, the employee was placed in a leave without pay (LWOP) status for four days. Effective April 17, 2013, the employee was officially placed on LWOP. The employee was not entitled to receive LQA in a LWOP status. Due to an administrative error, his records were not updated to reflect that he was in a LWOP status. As a result, he erroneously received LQA in the amount of \$764.78 during the PPE April 6, 2013, through April 20, 2013.

In the appeal decision, the DOHA adjudicator determined that the \$1,075.10 could not be considered for waiver. The adjudicator explained that an overpayment in advances of LQA is not eligible for waiver consideration because the bi-weekly estimated advances, which are subject to reconciliation, are not erroneous when made. The adjudicator then determined that the \$764.78 resulting from the employee erroneously receiving LQA while in a LWOP status could be considered for waiver. However, the adjudicator found that waiver of the \$764.78 was not appropriate under the circumstances because the employee did not question his entitlement to receive LQA while in a LWOP status.

In the employee's reconsideration request, he states that while he was overseas, there was no Human Resources Representative at his duty station. He states that he was never advised that he was no longer entitled to receive LQA in a LWOP status. He states that as a new employee, he should not be in a position to verify information on his own accord. Finally, he contends that the adjudicator mistakenly sent him confidential information on cases of seven other individuals.

### **Discussion**

Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes. 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2.

Preliminarily, we will address the employee's concern that the adjudicator sent him confidential information contained in other employee's case files. The decisions included in the appeal decision are legal precedent and were cited by the adjudicator as analogous to the facts presented in the employee's case. The decisions cited are redacted and DOHA is legally required to publish case precedent online. *See* Instruction ¶ E3.7.

In regard to the overpayment of \$1,075.10 resulting from the reconciliation of the employee's LQA, the adjudicator properly determined that the overpayment could not be considered for waiver because the employee was not erroneously overpaid. In order to be considered for waiver under 5 U.S.C. § 5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.5. In this case, the overpayment that resulted from the reconciliation of the employee's LQA cannot be considered for waiver because the LQA payments were proper when made. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923, and

by implementing regulations issued by the Department of State. The statute, 5 U.S.C. § 5922(b), anticipates that periodically a reconciliation of the employee's LQA account is performed, after which the employee is required to repay the amount by which the amount he received exceeds his allowable expenses. Thus, we have held that 5 U.S.C. § 5584 does not apply to the excess of LQA received unless the LQA payments were made erroneously. *See* DOHA Claims Case No. 2015-WV-031003.2 (December 10, 2015); DOHA Claims Case No. 2012-WV-082001.2 (January 7, 2013); DOHA Claims Case No. 07060603 (June 26, 2007); DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999).

As for the employee erroneously receiving LQA in the amount of \$764.78, the adjudicator properly denied waiver of this portion of the debt because the employee should have questioned the receipt of LQA when he was in a LWOP status. In his original waiver request, the employee states that in April 2013 he requested to be placed on LWOP while he traveled home to care for his father. During the PPE March 23, 2013, prior to being placed in a LWOP status, the employee received \$526.12 for 14 days of LQA. In the PPE April 6, 2013, the employee was in a LWOP for four days but received LQA for 14 days in the amount of \$526.12. Therefore, the employee should have questioned why he received LQA for 14 days when he was on LWOP for four days. When an employee who is on LWOP receives a payment, he has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government. *See* DOHA Claims Case No. 02052002 (August 27, 2002). In addition, as pointed out by the adjudicator, there is nothing in the record to reflect that the employee paid rent while he was on LWOP. Since there is no indication that the employee continued to accrue housing expenses while he was on LWOP, he should have further questioned his receipt of LQA.

### Conclusion

The employee's request for reconsideration is denied, and we affirm the appeal decision of November 30, 2016. In accordance with the Instruction ¶ E8.15, this is the final administrative decision 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