

employee's FLSA category should have remained exempt. Since the employee's FLSA category was reflected as nonexempt, the employee erroneously received overtime pay at the rate of one and one half times the rate of his basic pay instead of being capped at his basic pay rate. As a result of this administrative error, the employee was overpaid \$26,442.40 during the PPE January 15, 2011, through April 9, 2011. Since the employee was underpaid \$176.96, DFAS applied this amount to the overpayment reducing it to \$26,265.44.

The employee subsequently was notified of his debt in May 2011. On August 5, 2011, he requested waiver. On August 17, 2012, DFAS denied the employee's request for waiver and notified him of his appeal rights. The employee did not appeal DFAS's denial until March 10, 2014. DFAS determined that the employee's appeal of DFAS's denial of his waiver request could not be considered because it was not received within 30 days of the date of their denial.

In the appeal decision dated September 27, 2016, the DOHA adjudicator upheld DFAS's determination that the employee's appeal was untimely. The adjudicator further stated that even if DOHA could consider the employee's appeal, DOHA would have denied waiver of the overpayment because the employee should have questioned the large, retroactive payment he received during the PPE January 15, 2011, in the amount of \$14,772.32. At the end of the appeal decision, the adjudicator advised the employee that he could request reconsideration of the decision, but that DOHA must actually receive his request within 30 days of the date of the decision. The employee subsequently requested an extension to file his reconsideration request. The DOHA adjudicator granted the employee the extension and advised him that his reconsideration request was due no later than December 19, 2016. On December 22, 2016, DOHA received the employee's reconsideration request.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee, but our authority in this regard is regulated by DoD Instruction 1340.23 (Instruction) (February 14, 2006). Under Instruction ¶ E8.2.1, DFAS must have received the employee's appeal of the denial of his waiver request within 30 days of the date of their initial determination. DFAS may extend this period up to an additional 30 days for good cause shown but no appeal may be accepted after this time has expired. This deadline was carefully explained in DFAS's decision. Even if DOHA could have considered the substance of the employee's waiver request, the employee did not demonstrate the findings in DFAS's decision and DOHA's appeal decision were unreasonable, or that the conclusions drawn were arbitrary, capricious or contrary to law.

Conclusion

The employee's appeal of DFAS's denial of his waiver request is untimely. In accordance with ¶ E8.15 of the Instruction, the September 27, 2016, appeal decision is the final decision of the Department of Defense on the member's waiver request.

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