

DATE: December 8, 2016

In Re:)

[REDACTED])

) Claims Case No. 2016-WV-061604.2

Claimant)

**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

A retired employee of the U.S. Navy requests reconsideration of the October 18, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-061604. In that decision, DOHA denied waiver of the overpayment in the amount of \$15,336.53.

Background

On May 11, 2001, the employee retired from federal civil service and began receiving his annuity. On June 3, 2002, he was reinstated as a career federal employee. As a result, his annuity was subject to offset due to his employment but his salary was not reduced during the period June 3, 2002, through September 27, 2008, causing him to be overpaid \$15,336.53.¹

¹The Defense Finance and Accounting Service (DFAS) advised our office that there is no supporting pay data for the employee during the period June 3, 2002, through September 21, 2002. Therefore, DFAS is only holding the employee liable for the overpayment during the period September 22, 2002, through September 27, 2008.

In the appeal decision, the DOHA adjudicator denied waiver of the overpayment because the record contained a corrective *Notification of Personnel Action* (SF-50) issued on October 2, 2002, stating that the employee's annual salary would be reduced by the amount of his retirement annuity and by future cost of living increases. The adjudicator found that the employee had a duty to carefully examine the pay documentation issued to him and report any errors.

In his reconsideration request, the employee reiterates that he never received the corrective SF-50 and was told that he was not subject to the offset when he was reinstated. He attaches a letter from the Department of the Navy Office of Civilian Human Resources (OCHR) dated April 6, 2009, to his Senator. In the letter, the Director of Assessment and Workforce Inquiries Division states that a request for a waiver of the offset provision to appoint the employee as a reemployed annuitant was submitted to the OCHR on January 12, 2009, and the OCHR approved a retroactive waiver to the employee effective November 24, 2003.

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 if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

In this case, we believe the employee reasonably may not have been aware that he was being overpaid and acted in good faith in accepting the overpayment resulting from his salary being miscalculated during the period June 3, 2002, through September 27, 2008. Therefore, we find that collection of the debt in the amount of \$15,336.53 would be against equity and good conscience and not in the best interests of the United States. *See* DOHA Claims Case No. 99070513 (August 16, 1999).

Conclusion

For the reasons stated above, we hereby waive \$15,336.53. In accordance with the Department of Defense Instruction 1340.23 ¶ 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