

DATE: October 31, 2016

In Re:)

[REDACTED])

) Claims Case No. 2016-WV-091301.2

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

An employee of the U.S. Air Force requests reconsideration of the September 21, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-091301. In that decision, DOHA denied waiver of the overpayment in the amount of \$5,249.60.

Background

On October 23, 2011, the employee transferred from the Department of Labor as a GS-12, step 6, to the Air Force, as a GS-13, step 3. At that time, a *Notice of Personnel Action*, SF-50, was issued effecting the employee's transfer. In addition, another SF-50 was issued erroneously granting the employee a within-grade increase (WGI) from a GS-13, step 3, to a GS-13, step 4. As a result, the employee was overpaid \$5,249.60 during the period October 23, 2011, through September 20, 2014.

In the appeal decision, the DOHA adjudicator upheld the Defense Finance and Accounting Service's (DFAS's) denial of the employee's request for waiver. The adjudicator

found that even though the employee immediately questioned his civilian payroll clerk concerning the WGI and was told it was correct, he should have received assurances from a more appropriate official such as a human resources specialist or the Air Force Personnel Center (AFPC).

In his reconsideration request, the AFPC and the employee's command provided previously omitted information in support of waiver of the indebtedness. His command provided specific information concerning the employee's in-processing. His command states that in 2011 the requirement for civilians to in-process with the AFPC was removed. At the time of the employee's transfer to the Air Force, employees in-processed through their base-servicing Civilian Personnel Office. The command states that the employee was told at his in-processing briefing that any pay issues had to be addressed with the base-level finance office. The employee's command states that it has since made sure that all new employees process through the AFPC.

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 had no reason to further question his pay being set as a GS-13, step 4. As corroborated by his civilian payroll clerk, he was told by her, after reviewing his pay records, that since the AFPC had processed the WGI, it was correct. Additionally, based on new information, the employee was told that all pay issues were to be handled with his base-level finance office. Under the circumstances, we believe the employee properly addressed his issue with the appropriate official and had no reason to continue to question the accuracy of his pay during the period October 23, 2011, through September 6, 2014. Therefore, we find that collection of the portion of the debt in the amount of \$5,144.00 would be against equity and good conscience and not in the best interests of the United States. *See* DOHA Claims Case No. 2011-WV-092706.2 (December 15, 2011). However, we note that the employee acknowledges receiving an email on September 17, 2014, from the AFPC informing him that he had been overpaid because he had received the WGI to a GS-13, step 4 upon his transfer when he was not due it until October 21, 2012. Once the employee was notified that he was being overpaid, he did not acquire title to any overpayment he received after that point, and has a duty to return the excess amount to the government. Therefore, it would not be against equity and good conscience to deny the portion of the overpayment the employee received during the period September 7, 2014, through September 20, 2014.¹ *See* DOHA Claims Case No. 2012-WV-082808.2 (November 20, 2012); and DOHA Claims Case No. 2011-WV-092706.2, *supra*.

¹The employee received his pay for the pay period ending September 20, 2014, on September 26, 2014.

Conclusion

For the reasons stated above, we hereby waive \$5,144.00. 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board