

DATE: November 30, 2016

---

In Re: )

[REDACTED] )

Claimant )

---

) Claims Case No. 2016-WV-070607.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

To be considered under the provisions of 5 U.S.C. § 5584(b)(2), an employee's waiver request must be received within three years of the discovery of the debt.

**DECISION**

An employee of the U.S. Air Force requests reconsideration of the October 12, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-070607. In that decision, this Office affirmed the determination of the Defense Finance and Accounting Service (DFAS) that the employee's application for waiver in the amount of \$1,973.60 could not be considered because it was not received within the 3-year statute of limitations.

**Background**

The employee was assigned to an air base overseas. During the pay period ending (PPE) December 25, 2004, the employee's salary was miscalculated causing her to be underpaid \$592.08. On January 3, 2005, a *Notification of Personnel Action*, SF-50, was issued granting the employee a promotion which reassigned her to an Air Force base in the United States effective December 26, 2004. However, due to an administrative error, the employee erroneously continued to receive salary payments based on her assignment overseas. As a result, she was overpaid \$2,565.68 during the PPE January 8, 2005, through January 22, 2005. Since she was due \$592.08, this amount was applied to her overpayment reducing it to \$1,973.60 (\$2,565.68 - \$592.08).

DFAS discovered the overpayment in February 2005. On February 4, 2016, the employee requested waiver of the debt.

In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the employee's application for waiver in the amount of \$1,973.60 could not be considered because it was not received within the 3-year statute of limitations.

In her request for reconsideration, the employee states that she does not believe the debt was officially discovered on February 19, 2005. She states that she believes the debt was discovered after an audit was done in 2010.

### **Discussion**

Under 5 U.S.C. § 5584, we may waive a claim for an erroneous payment of pay or allowances 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. However, we may not waive collection of an erroneous payment if the employee's application for waiver is received after the expiration of three years immediately following the date on which the erroneous payment was discovered. *See* 5 U.S.C. § 5584(b)(2). This provision is implemented within the Department of Defense (DoD) by DoD Instruction 1340.23 (February 14, 2006). Enclosure 5 of this Instruction states that the date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. *See* ¶ E5.6 of this Instruction. Therefore, the date of notice to the employee is not relevant in fixing such date. *See* DOHA Claims Case No. 2014-WV-101402.2 (August 21, 2015); and DOHA Claims Case No. 2012-WV-122002.2 (September 5, 2013). Since the employee's written waiver application was not received until February 4, 2016, we have no authority to consider it. *See* DOHA Claims Case No. 2012-WV-110902.2 (May 2, 2013).

The employee requests verification that the overpayment was officially discovered by an appropriate official on February 19, 2005. The record contains pay histories that essentially contain the same information that is reflected on an employee's leave and earnings statement (LES). The pay history for the PPE February 19, 2005, reflects a debt in the amount of \$1,973.60.

## Conclusion

We affirm DOHA's appeal decision of October 12, 2016, that waiver of repayment of the employee's debt may not be considered due to the fact that the request was not received for more than three years after the discovery of the debt. In accordance with 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