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April 28, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00030709

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee's pay began to be miscalculated in 1993 when his pay plan was changed. He was unaware that he was being overpaid until he received notification in January 1999. The overpayment continued until February 13, 1999. Under 5 U.S.C. § 5584, the amounts he erroneously received before notification may be waived. The excess amount he was paid after notification may not be waived because he did not acquire title to that amount and had a duty to return it when asked to do so.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 99120901, dated January 6, 2000, which waived repayment of all but \$40 of a debt of \$11,018.40 which arose when a Defense Department employee was overpaid.

Background

Effective March 21, 1993, the employee was notified on a Notification of Personnel Action, Standard Form 50 (SF-50), that his pay plan was changed from a Wage Grade-7 to a General Schedule-2. His hourly rate was miscalculated as \$13.12 rather than \$12.11. Comparable miscalculations continued as the employee received cost of living increases. The error was discovered in January 1999, and he states that he was notified on January 28, 1999. Between March 21, 1993 and February 13, 1999, the employee was overpaid in the amount of \$11,162.65. When a subsequent audit revealed that the employee had been underpaid by \$144.25, his debt was adjusted to \$11,018.40. The Defense Finance and Accounting Service indicated that the employee was unaware that he was being overpaid until he was notified of the error in January 1999. In our Settlement we therefore waived repayment of all of the debt except the \$40 which accrued after notification. The employee argues that the balance of his debt should be waived because the entire debt arose due

to administrative error.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Our decisions indicate that waiver is not appropriate if the employee is aware that he is being overpaid. *See* DOHA Claims Case No. 98081726 (October 29, 1998).

In our Settlement Certificate we waived collection of the \$10,978.40 which the employee received before he was notified that he was being overpaid. We properly denied waiver of \$40 which was paid to him after notification. When an employee is aware that he is being overpaid, waiver is not appropriate. He does not acquire title to the excess payments and has a duty to return the excess amounts to the government when asked to do so. *See* DOHA Claims Case No. 98081726, *supra*.

While the employee requests waiver of the balance of his debt because it arose due to administrative error, such error does not provide a basis for waiver. *See Master Sergeant Haywood A. Helms, USAF, B-190565, Mar. 22, 1978.*

Conclusion

We affirm the Settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board