

DATE: August 18, 2000

This decision was remanded by the DoD Deputy General Counsel (Fiscal) on May 2, 2000, for further consideration of the lump sum leave payment.

In Re:

[Redacted]

Claimant

Claims Case No. 00053006

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee applied for retirement effective March 1, 1997, but due to administrative error, the application was misplaced and annuity payments did not begin until 1999. Meanwhile, the employee received salary and allowance payments for the two pay periods following the pay period in which she requested retirement. Even if the government's delay had caused the employee to be uncertain about the effective date of her retirement, the employee cannot reasonably expect to continue to receive active Federal service salary and associated allowances for the two pay periods following the pay period in which she retired when she no longer performed official duties. Similarly, when the employee had used up all of her annual leave as "terminal leave" prior to retirement, she should not have reasonably expected to receive a lump sum payment for 129 hours four months after her requested retirement date.

DECISION

A retired Department of the Army civilian employee appeals the March 21, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00031421, denying her application for waiver of a debt resulting from erroneous overpayments of salary, certain allowances, and a lump sum payment for annual leave. The total amount of the debt is \$5,330.98. [\(1\)](#)

Background

The employee had worked in Germany and submitted her application for retirement effective March 1, 1997. (2) However, the member received pay and allowances after she stopped performing official duties; *i.e.*, for the pay periods ending March 15, 1997, and March 29, 1997. DFAS denied waiver because the member had stopped working and used up her leave by the requested date of retirement (March 1, 1997), and she had no reasonable expectation of further compensation.

According to the employee, the civilian personnel office lost her retirement application three times, forcing her to continue to re-submit it. The employee indicates that she had to remain in Germany without support until she received confirmation of her retirement. Also, without an approved retirement application, she was unable to obtain orders to ship her household goods home and did not have access to her Thrift Savings. The employee also complains about the financial hardship imposed on her as a result of the government's failure to properly process her retirement application. The record indicates that she did not start receiving her annuity until 1999, and correspondence from the Office of Personnel Management indicates that the civilian personnel office may not have fully supported the retirement application.

The employee agrees that she did receive automatic deposits (which would have been salary plus post allowance and LQA) for a few pay periods after her requested retirement date. But she argues that at the time her retirement status was unclear and that she had to engage the government in an enormous amount of official correspondence to rectify the situation. She argues that in January and February 1997, she was in weekly and sometimes daily contact with the local finance office about money due to her "through improper processing of time cards which affected my home leave and annual leave adjustments." She also argues that the civilian personnel office "muddled my retirement date so badly that even I became unsure of the exact date." She adds that "[w]ith this confusion in the civilian personnel office and the Finance Office from January to June 1997 I would not have been alerted to any unusual direct payment into my account. . . Accordingly, I was not aware of my actual retirement date at the time I was on terminal leave and did not know how long I was being paid." She states that she was not aware of any payment error to her until December 1998.

The employee provided us correspondence dated July 19, 2000, in which she noted an additional error in our Settlement Certificate in that DOHA premised its findings on the "iconoclastic idea that the Finance Office makes no mistakes." She directed our attention to the headline in the July 17, 2000, issue of the *European Stars and Stripes*; namely, "DOD shortchanging its civilians, audit finds, page 2." The article basically described an Inspector General review of the records of 279 randomly selected employees and found a lack of adequate controls by DFAS and military personnel offices to support the amounts withheld from the paychecks of civilian employees.

Discussion

The employee's disillusionment with finance and personnel officials is understandable. The record gives us a little insight into the circumstances surrounding the mishandling of her retirement application, which cascaded into later personnel and finance errors. (3) We do not assume an "iconoclastic" notion that the government is always deemed to be correct, and note with regret that to one extent or another, all of the waiver applications that we review involve some degree of government error. But the question that we must answer here is whether there is a legal basis upon which we can predicate a waiver of the employee's debt for the erroneous payments the employee received for the pay periods

ending March 15, 1997, and March 29, 1997, or for the lump sum leave payment she received in July 1997.

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. The standard we use to determine fault is whether a reasonable person knew or should have known that she was receiving payments in excess of her entitlements. *See* 4 C.F.R. part 91. Our decisions and those of the Comptroller General indicate that waiver is not appropriate when an employee is aware of information indicating an overpayment, no matter how incompetent the government's mistake. In such instances, the employee must seek corrective action. The employee does not acquire title to the excess payment merely because an administrative error occurred and has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 97062629 (July 17, 1997) and the decisions cited therein.

The employee is partially at fault with regard to the compensation payments for the pay periods ending March 15, 1997, and March 29, 1997. The employee did not cause the erroneous payments to be made to her. But she had requested separation for retirement effective March 1, 1997, and had not actually worked after that time. We assume for purposes of this decision that she had experienced some time and attendance accounting problems, and leave accounting problems, while in active Federal service. We also assume that the government's failure to properly process her retirement may have caused her some confusion about the effective date of retirement. Even so, having stopped performing official duties, and with no remaining leave balance, we are unaware of anything in the record suggesting that she had a reasonable expectation of pay and allowances for pay periods after her requested retirement in amounts similar to those received in active Federal service. *Compare* DOHA Claims Case No. 00032701 (May 30, 2000); DOHA Claims Case No. 00022208 (May 26, 2000); and DOHA Claims Case No. 98112018 (January 11, 1999). The employee should have questioned finance authorities about her right to payment for the two pay periods.

A similar problem presents itself with respect to the lump sum leave payment. While the employee indicates some leave balance problems during her active Federal service, she stated that she considered herself to have been on "terminal leave" with respect to time prior to her retirement. Consistent with this characterization of her leave, the employee's leave and earnings statement for the pay period ending March 1, 1997, indicates that she no longer had accrued annual leave by the end of that pay period. The employee did not cause the erroneous payment of \$2,071.74 to be made to her after the pay period ending July 19, 1997, but based on the above record, we believe that a reasonable person would have contacted finance officials to inquire about the nature of the sudden payment of this amount of money. Our review of the record does not suggest any reasonable expectation of payment in this amount for accrued leave.

The employee also asked us to consider her meager retirement and the undue personal financial hardship she faces if she has to repay the debt. But, as DFAS earlier advised the employee, financial hardship is not an appropriate basis for granting waiver. *See* DOHA Claims Case No. 97090809 (September 23, 1997).

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. As reported by the Defense Finance and Accounting Service (DFAS), the first part of the debt is \$2,156.04 for basic pay during the pay periods ending arch 15 and March 29, 1997; the second and third parts of the debt involve \$1,043.28 for living quarters allowance (LQA) and \$59.92 for post allowance, respectively, for the two March 1997 pay periods; and the last part is \$2,071.74 for 129 hours of lump sum leave paid after the pay period ending July 19, 1997.

2. As explained in the Settlement Certificate, there was some confusion with respect to the member's actual retirement date. A *Notification of Personnel Action* (Standard Form 50 or SF-50) initially indicated that her retirement date was January 3, 1997. It was later corrected to indicate that the retirement date was March 1, 1997, as the employee indicates. For reasons that are unclear, DFAS's last administrative report stated that the member retired effective March 3, 1997. Our Settlement Certificate found that the effective retirement date was Saturday, March 1, 1997, and since this date is supported by the corrected SF-50 and is the date the employee contends is the effective retirement date, we find for the purposes of this decision that it is the effective retirement date.

3. For example, as a result of the retirement date error in the initial SF-50, the employee's debt was calculated to include January and February salary payments and allowances. This calculation was later rescinded.