DATE: February 2, 2001

In Re:

[Redacted]

Claimant

Claims Case No. 01010801

CLAIMS APPEALS BOARD DECISION

DIGEST

Due to clerical error, the Air Force paid an employee $20,000, instead of the approved $200, as an award for his suggestion. The employee seeks waiver of the overpayment. The record indicates that the employee first became aware of a $20,000 award (net direct deposit $12,850.90) on a Friday, and obtained information concerning the reason for the award the following Monday. The employee says that after obtaining this information, he and his spouse paid creditors before learning on Monday night that the Air Force awarded him only $200. Air Force correspondence indicates that the employee was advised earlier on Monday that the $20,000 was an error. Even if the employee did not suspect an error until Monday night, waiver is not proper because the employee had no reasonable expectation that he was due $20,000.

DECISION

An Air Force employee, through his attorney, appeals the May 25, 2000, denial by the Defense Finance and Accounting Service (DFAS) of his application for waiver of the $20,000 indebtedness that the employee incurred as a result of an erroneous overpayment under the Air Force's suggestion awards program.

Background

DFAS reports that it paid the employee $20,000 instead of $200, due to a clerical error. In accordance with the AF Form 1000-1, *Idea Evaluation and Transmittal*, dated August 5, 1998, the employee was awarded $200 for a spreadsheet adaptation that he designed to track overtime at his base using a popular off-the-shelf spreadsheet software program. A clerk failed to insert a decimal point in the amount of the award when the award was loaded into the civilian pay system, and it was too late to correct this error prior to the direct deposit of amounts due the employee for the pay period involved.

The employee provides the following additional information. Sometime in 1997, a supervisor contacted him and requested that he develop a computer "program" to track employee overtime. The employee was an aircraft mechanic, and he contends that he developed the program on his own time outside the scope of his employment. In February 1998, the employee submitted a "beta" version of his spreadsheet to the base IDEA Program[(1)] office as an employee suggestion. The employee submitted a packet that included the Air Force Form 1000, *IDEA Application*, and a purported "*Limited Use Software License Agreement*." The IDEA office hesitated in accepting the suggestion due to the presence of the software licensing agreement, but the employee states that it was approved after he attached a handwritten letter to the packet that limited the licensing agreement's application only to the point in time that he had "approved and accepted" a suggestion award. An award was approved on August 5, 1998. The employee states that he was informed about the award on October 27, 1998, but he was not aware of the amount until he saw his leave and earnings statement (LES) (related to the Pay Period ending October 24th) late on October 30, 1998. The LES indicated that he was awarded $20,000 (a net amount of $12,850.90 as a direct deposit) for a suggestion award. The employee states that he was not aware of which of his suggestions had resulted in an award, so on Monday, November 2, 1998, he telephoned the IDEA office to determine which of his suggestions was involved. The employee states that he was advised by the IDEA office that the overtime program was involved, but he states that he did not discuss the amount of the award with representatives from that office at that time.[(2)] In the evening of November 2nd, after he reported for work, the employee states that he discovered the official certificate for the award that indicated that the amount of the award was only $200, not $20,000. By that time, the employee states, his wife had paid their creditors, and as soon as he discovered a possible error, he telephoned his wife to advise her not to spend any additional money because there might be a mistake. From November 3, 1998, until February 15, 1999, the employee sought reconsideration of the amount of the award.

The employee and his spouse contend that on February 15, 1999, the employee reached a non-written agreement with the base Inspector General in which the base and all of its divisions agreed to immediately cease using the computer program; remove and erase the program from any computer onto which it had been downloaded; immediately return the program to the employee; and assert no ownership claim or license for use. In return, when the employee received the program and satisfactory evidence that it was no longer in use and had been removed, he would immediately contact DFAS to make arrangements to repay the $20,000. The employee asserts that the Air Force did not perform any of the promises under this agreement; accordingly, under the agreement, it is his contention that the Air Force cannot take any action to collect the overpayment. Generally, the employee also points out that the Air Force waited for more than a year after the agreement before it initiated collection action; the error was administrative in nature and completely beyond the employee's control; a $20,000 award was not excessive and was proportionate to the amount of time he spent developing the program and the tangible savings accruing to the base; and a $20,000 award was consistent with amounts other employees at his base had received for their suggestions.

Discussion

The only issue before us is whether the employee has established a sufficient basis for us to conclude that the $20,000 erroneous payment should be waived under title 5 of the United States Code, Section 5584 (5 U.S.C. § 5584). For purposes of this decision we assume that a payment for a suggestion pursuant to 5 U.S.C. § 4501 *et. seq.,* and implementing Air Force regulations is "pay" as defined in 4 C.F.R. § 91.2 (1996). We do not have authority to review the merits and valuation of the employee's suggestion or the legal issues related to the IDEA program. *See Mr. Larry Carton*, B-202655, Nov. 3, 1981. We will not address any of the issues related to the IDEA program, the purported software agreement, or the purported agreement with the base Inspector General that the employee and his counsel raised in their various submissions. Thus, for example, we are bound by the Air Force's interpretation of paragraph 4.6 of the prior version of AFI 38-401. Paragraph 4.6 stated that the Air Force is not permitted to recover an erroneously paid award due to management error, but this does not help the employee because the payment of the $20,000 in this

instance was a clerical error and not a management error.

We have authority to waive erroneous payments of pay and allowances to Department of Defense employees 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 fault on the part of the employee or former employee. *See Standards for Waiver* 4 C.F.R. 91.5(b). For the purposes of Section 5584, we interpret "fault" to include more than a proven overt act or omission. We consider fault to exist if in light of all the circumstances it is determined that the employee should have known that an error existed and taken steps to have it corrected. The standard we employ is whether a reasonable person should have been aware that he was receiving payments in excess of his entitlement. The fact that a debt arose due to administrative error does not entitle an employee to waiver or relieve him of the responsibility to verify the correctness of payments he receives. *See generally Barry L. Wells,* B-228828, Mar. 23, 1988.

DFAS had a reasonable basis for denying relief under 5 U.S.C. § 5584 in this instance. First, as required by the Air Force IDEA program, the employee has not provided clear and convincing evidence that his suggestion generated sufficient tangible savings for him to reasonably expect a $20,000 award. In fact, the evaluators accepted the suggestion only on an "optional" basis for intangible savings, preferring to keep the existing system for reporting overtime. The employee generally asserts that his work justified the amount received, but the only empirical data the employee offered to show a reasonable expectation of receipt of that amount was a news article from a local newspaper dated after the employee received payment. The article noted that one employee received an award of $25,000 after generating tangible savings of more than $3 million, but most awards were significantly smaller. The record also includes a copy of the employee's own after-the-fact correspondence alleging his conservative estimate of a tangible savings of $79,605.48 per year, and even if the Air Force evaluators had accepted this estimate (which they did not), the employee's gross award would have been only $11,940.67, not $20,000. A person who expects to receive a substantial direct deposit of money should be able to articulate an objective basis for his/her belief that he expected to receive something approximating the amount involved, and we have rejected attempts by individuals to justify the reasonableness of their expectation of the amount with general subjective statements that he/she believed that their contribution was worth such an amount. *See* DOHA Claims Case No. 00112801 (December 28, 2000); and DOHA Claims Case No. 99121406 (January 19, 2000). In the present case, the employee has not provided more than general statements that he had a reason to expect $20,000 for his suggestion.

Second, the employee argues that during the day of November 2, 1998, his wife paid their creditors relying on the fact that the $12,850.90 net direct deposit was his to keep. But the employee admits that he did not await the actual suggestion award documentation prior to expending money, and base officials contend that their representatives advised the employee earlier on November 2nd that the award was a mistake. Even accepting the employee's rendition of the facts, the government quickly advised the employee that a mistake was made.

The waiver request is denied. The employee may seek further review of the award decision through Air Force officials or through other means. *See generally Ridenour v. United States*, 44 Fed. Cl. 202 (Fed. Cl. 1999).

Conclusion

The decision of DFAS to deny waiver is affirmed.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. Suggestion awards are part of the Innovative Development through Employee Awareness (IDEA) program. The current program is implemented by Air Force Instruction (AFI) 38-401 (December 6, 2000). This instruction supercedes AFI 38-401 (October 1, 1997), AFH 38-402 and 38-403 (August 31, 1994), which controlled the employee's suggestion.

2. Correspondence from the base to the employee's Congressional representative dated December 1, 1998, appears to dispute this. Among other things, it states that when the employee contacted IDEA office representatives on November 2, 1998, they advised him that the money he received was an overpayment that he would have to repay.