

DATE: April 2, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02032201

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware or should be aware that she is receiving payments in excess of her entitlements, she does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

DECISION

An employee of the Department of Defense appeals the February 5, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 02013007, in which DOHA waived \$44 of the government's claim against her for the recovery of erroneous overpayments of salary totaling \$4,896, and disallowed waiver on the remaining \$4,852. The employee seeks waiver of the entire amount.

Background

The Defense Finance and Accounting Service (DFAS) reports that the employee, a GS-13, was erroneously overpaid \$4,896 of basic salary during the pay periods ending (PPE) January 15 through September 9, 2000. A portion of the debt, \$44, occurred when the employee's basic salary was erroneously set at an hourly rate of \$41.53 instead of \$40.98 during the PPE January 15, 2000. The remaining portion of the debt, \$4,852, was the result of the employee's basic salary being erroneously set at the hourly rate of \$44.38, instead of \$40.98, during the PPE January 29 through September 9, 2000. The error was discovered, and the employee was first notified by letter dated June 24, 2000; however, as DFAS admits, the overpayments continued through September 9, 2000, due to administrative error.

The employee notes that she received a *Notification of Personnel Action* (Standard Form 50), effective January 2, 2000,

indicating that her total salary was \$86,665 (\$79,473 basic pay plus a locality adjustment of \$7,192, or an adjusted basic pay of \$86,665). The employee's leave and earnings statement (LES) for the PPE January 15, 2000, reflected these amounts and noted an hourly rate of \$41.53. However, starting in the PPE January 29, 2000, the LES reflected an hourly rate of \$44.38, basic pay of \$85,518, a locality adjustment of \$7,097, and an adjusted basic pay of \$92,615. On March 8, 2000, the employee states that she received another SF 50, for a reassignment effective February 13, 2000, indicating to her that her "annual salary" was in fact \$92,615. At that point, since, in her opinion, the LES and the SF 50 matched each other, she believed that the employing office had finally determined that \$92,615 was her correct annual salary.⁽¹⁾ She says that she was not aware of the overpayment until she received the debt notification letter of June 24, 2000, and from that point until September 18th she tried to have her employing office issue a corrected SF 50. She argues that if she had not pressed the matter with pay officials, the overpayments would have continued.

The employee also notes that her pay situation was somewhat unusual. In her waiver application, the employee stated that she had been involved in a reduction in force, and at the time of the overpayments she was eligible to receive 50% of any adjustments (e.g., an annual increase) in the maximum rate for the grade to which she was reduced. She argued that none of the published General Schedule Locality Pay Tables would have reflected current salary.⁽²⁾

DFAS recommended waiver of the overpayment of \$44 for the pay period ending (PPE) January 15, 2000. DFAS noted the employee's argument that the SF 50 issued in January and the LES for this pay period were in agreement with regard to the amounts for basic pay, locality adjustment, and adjusted basic pay. However, DFAS also noted that these amounts on the LES for the PPE January 29, 2000, were completely at variance with the SF 50: a basic pay of \$85,518, a locality adjustment of \$7,097, and adjusted basic pay of \$92,615. DFAS believes that the employee was at fault for not questioning the increases in these amounts at this point without supporting documentation for them.

Discussion

Under 5 U.S.C. § 5584, we may waive collection of a claim for the erroneous overpayment of pay and allowances against an employee if collection would be against equity and good conscience and is 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. *See also Standards for Waiver*, 4 C.F.R. § 91.5 (1996). In the present case the erroneous salary overpayments were made as a result of administrative errors and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part. However, an employee is at least partially at fault and waiver is precluded when, in light of all of the circumstances, it is determined that she 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 suspected that she was receiving payments in excess of her entitlement. *See DOHA Claims Case No. 97062629* (July 17, 1997). An employee is not entitled to waiver as a matter of right merely because she was erroneously overpaid due to administrative error. *See DOHA Claims Case No. 02030503* (March 14, 2002); and *DOHA Claims Case No. 01092001* (October 29, 2001).

Even if the employee subjectively believed that she was entitled to an adjusted basic pay of \$92,615, she no longer could have doubted the government's position in this regard after receiving the June 24, 2000, letter. DFAS advised her that the correct hourly rate was \$40.98. The government's erroneous continuation of the overpayments did not give her an entitlement to such overpayments. She had a duty to hold the excess amounts aside for possible repayment to the government no matter how incompetently the government continued to pay her at the erroneously higher rate. *See DOHA Claims Case No. 00053006* (August 18, 2000); *DOHA Claims Case No. 98040110 et al* (July 8, 1998), *aff'd* Deputy General Counsel (Fiscal) February 14, 2001; and *DOHA Claims Case No. 97062629, supra*; Comptroller

General decision B-234731, June 19, 1989.

In our view, the employee should have questioned her pay by the PPE January 29, 2000, if not before. As DFAS properly points out, the amounts on the January 29th LES were at variance with the SF 50 that she had previously received. Our comparison of the January 15th and January 29th LESs, for example, indicates that the employee's net pay jumped from \$2,049.35 to \$2,287.96 over one pay period. Clearly, this should have drawn her immediate attention.

The employee's argument that she reasonably relied on the official nature of the subsequent SF 50 indicating a \$92,615 amount, is defective in several respects. First, as DFAS suggests, she did not have this or any documentation in early February 2000, when she received her pay for the PPE January 29, 2000, to justify the substantial increase in pay compared with the period two weeks prior to that time.

Second, the SF 50 that the employee says she received on March 8, 2000, does not include the figure \$92,615. In fact, in blocks 12 and 20, the "Total Salary/Award" was \$85,518, which is the correct amount. Moreover, the two "Adj. Basic Pay" blocks, blocks 12C and 20C, also stated the same amount, not \$92,615. If anything, this SF 50 should have caused the employee to further question her entitlement. At best, it would have introduced even greater confusion into a picture that the employee already admitted was confusing. [\(3\)](#)

Third, assuming that the employee's LES for the PPE December 4, 1999, reflected the employee's correct 1999 salary, the increase between 1999 and the salary reported on the PPE January 29, 2000 LES, was noticeably larger than the normal annual increase, and even more extreme for an employee receiving only a part of the normal annual increase. An hourly rate of \$44.38 represents an increase of more than 11 percent over the hourly rate of \$39.85 stated in the LES for the PPE December 4, 1999.

For all of the reasons stated above, DFAS reasonably recommended that salary overpayments extending from January 16, 2000 (PPE January 29, 2000), through September 9, 2000, not be waived.

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

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Member, Claims Appeals Board

1. Our Office's Settlement Certificate noted that the employee's LESs during the period of overpayments showed her annual salary as \$92,615, but found partial fault because she had accepted this without obtaining official documentation establishing her salary at that level. The employee disputes this, noting that the SF 50 she received on March 8, 2000, showed basic salary of \$85,518 and a locality adjustment of \$7,097, or as she calculated, a total of \$92,615.

2. For example, in the LES for the pay period ending December 4, 1999, a month before the overpayment period began, her adjusted basic pay at that time was \$83,160 (basic pay of \$77,093 plus a locality adjustment of \$6,067). However, \$83,160 is not indicated for any of the GS-13 steps in the 1999 Washington, DC area Locality Pay Table, and fell between steps 7 and 8 of a GS-14.

3. In a memorandum dated July 5, 2000, the employee stated that she was confused about the correct amount of her pay and noted that she did not question the correctness of the amounts because they were constantly changing. She then assumed that the \$92,615 was correct because that amount had remained the same between the PPE January 29, 2000, and the notification letter.