

KEYWORD: General; waiver of indebtedness

DIGEST: An employee received 80 hours of salary while in leave without pay (LWOP) status. She should have been aware that she was not entitled to salary while on LWOP. Therefore, she did not acquire title to the money and had a duty to hold the money for eventual repayment. Under such circumstances, waiver is not proper.

CASENO: 02022603

DATE: 04/17/2002

April 17, 2002

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In Re:

Redacted

Claimant

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Claims Case No. 02022603

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee received 80 hours of salary while in leave without pay (LWOP) status. She should have been aware that she was not entitled to salary while on LWOP. Therefore, she did not acquire title to the money and had a duty to hold the money for eventual repayment. Under such circumstances, waiver is not proper.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate No. 02011620, dated February 7, 2002, which denied the waiver request of a civilian employee. The employee's debt arose when she received an erroneous payment for 80 hours of salary while on leave without pay (LWOP) status.

## Background

According to the record, on April 12, 2000, the employee submitted a written request for leave without pay (LWOP) in order to care for her ailing sister. Her LWOP status began on May 22, 2000. While in LWOP status, she was erroneously paid \$962.40 for 80 hours of salary for the period from June 4, 2000, until June 17, 2000.

In Settlement Certificate No. 02011620, *supra*, we denied waiver. The employee now appeals the determination in the Settlement Certificate, arguing that our analysis of her waiver request was unfair and insensitive. The employee requests that waiver be granted because the debt arose due to an administrative error. She stresses that she was going through a traumatic period during the time of the overpayment, and was not aware that the overpayment had occurred. Further, she emphasizes that she is not financially able to repay the debt at this time.

## Discussion

Under 5 U.S.C. § 5584, this Office has the authority to waive collection of overpayments of pay and allowances to an employee, when collection would be against equity and good conscience and not in the best interest of the United States. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). Waiver decisions are based only on the written record. The fact that a debt arises due to administrative error does not by itself entitle an employee to waiver, since erroneous payments generally result from administrative error, and waiver of such a debt which does not meet the waiver requirements would result in a windfall for the employee. *See* DOHA Claims Case No. 01092001 (October 29, 2001). If an employee knew or, as a reasonable person, should have known that she received a payment to which she was not entitled, waiver is not proper. In such a situation, the employee does not acquire title to the money and has a responsibility to hold the excess amount until asked to return it. *See Id.*

While we are sympathetic to the employee's situation, that fact that the overpayment was caused by an administrative error does not provide a basis for waiver. Since the employee was on LWOP, she should have known that she was not entitled to a payment after she had begun LWOP status. Therefore she did not acquire title to the money and had a duty to hold the money for eventual repayment. *See Id.* The fact that the money was deposited directly in her banking account instead of being mailed to her does not provide a basis for waiver, since she should have monitored her banking account. *See* B-252672, Sept. 20, 1993. <sup>(1)</sup>

Previous DOHA decisions have established that an employee has a duty to monitor both her leave and earning statements (LES) and her bank statements to verify their accuracy. *See* DOHA Claims Case No. 97013102 (July 23, 1997). In the instant case the employee would have been alerted to the overpayment sooner if she had looked at her LES or bank statement. When the employee is provided information by the government which indicates an error, she is generally considered to be at fault if she fails to review the information and bring it promptly to the attention of the proper authority. *See* DOHA Claims Case No. 98081701, (Aug. 21, 1998). <sup>(2)</sup> We understand that a review of this documentation may have been difficult given the employee's situation, however, prior DOHA and Comptroller General decisions do not allow waiver under the circumstances before us.

Finally, we note that financial hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 97042817 (July 1, 1997). The Defense Finance and Accounting Service (DFAS), at its own discretion, may take hardship into account in determining the monthly amount it collects from the employee. The employee may contact DFAS in that regard.

## Conclusion

We affirm the Settlement Certificate.

/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ \_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

/s/ \_\_\_\_\_

Jennifer I. Campbell

Member, Claims Appeals Board

1. This decision involves a military member's waiver request under 10 U.S.C. § 2774, but the same *Standards for Waiver* apply under both statutes.
2. This decision involves a military member's waiver request under 10 U.S.C. § 2774, but the same *Standards for Waiver* apply under both statutes.