DATE: March 14, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02030503

CLAIMS APPEALS BOARD DECISION

DIGEST

An Army employee who transferred to another agency received an erroneous deposit of living quarters allowance and basic salary in an amount and at a time approximating a regular pay day payment that he would have received if he had continued to work for the Army. The employee insists that he expected to receive payment of a claim in the amount deposited, but he is partially at fault for not verifying that the deposit was the amount due for the claim.

DECISION

A former employee of the Department of the Army appeals the February 5, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA), in which DOHA waived only $672.14 of $2,507.37 overpaid to him in pay and allowances. The employee seeks waiver of the entire amount.

Background

The record shows that the employee terminated his service with the Department of the Army on June 6, 2000.[(1)] However, due to administrative error, the employee erroneously received a living quarters allowance (LQA) of $672.14 for 14 days for the pay period ending (PPE) June 17, 2000. Thereafter, he also received a gross payment of $1,601.60 for 80 hours of basic salary plus $682.78 for LQA for the PPE July 1, 2000.[(2)] The total gross indebtedness, therefore, was $2,956.52, and after other credits, the net indebtedness was $2,507.37. On the recommendation of the Defense Finance and Accounting Service (DFAS), our Office waived collection of the $672.14 because the employee may have believed that this was a payment for his temporary quarters subsistence allowance (TQSA) claim. Our Office denied waiver of erroneous payments received after PPE June 17, 2000, because the employee should have questioned receipt

of an amount similar to the amount the employee usually received each pay day while employed with the Army. While not mentioned in our Settlement Certificate, the record includes a worksheet dated May 30, 2000, that DFAS states it received from the employee indicating that his TQSA claim was $1,168.41, and DFAS noted in its administrative report that this amount was significantly less than the amount of the erroneous overpayments.

On appeal, the employee contends that DOHA was prejudiced against his waiver request because our adjudicators inferred a negative characterization of his service as evidenced by the use of the word "terminated" to describe his appointment in the Settlement Certificate. We note that DFAS's administrative report also stated the employee's appointment was "terminated," and the SF 50 described a "termination" of the appointment. The employee states that he left his position with the Army to accept another position with the Department of Veterans Affairs.

The employee also contends that he was unaware of any overpayment until he received correspondence from DFAS Charleston in November 2000. He states that he filed a TQSA claim for about $2,900 on June 2, 2000, and he kept his overseas account open to receive this payment. He did not expect payment of the TQSA until the beginning or middle of July 2000, and he next checked the balance on his overseas account in mid-July 2000. At that point, he noticed that he had a balance of over $2,000 but less than the $2,900 he says that he claimed for TQSA. He was not surprised that the amount in the overseas account in mid-July 2000 was less than the $2,900 he claimed because in his 14 ½ years of experience in the Department of Defense indicated that the government discounted parts of his claims.

Discussion

The use of the word "terminated" by DOHA para-legal staff reflected experience, not prejudice, on their part. That word, as used in the Settlement Certificate, is a neutral term of art indicating that one's civilian employee appointment ended for whatever reason. The reason may be a retirement, voluntary resignation, transfer, reduction in force, or removal (the last of which is an example with negative connotations).

Under 5 U.S.C. § 5584, we may waive a claim for an overpayment of pay an employee received 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. *See also Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). In the present case the erroneous payments were made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part in that regard. However, an employee is considered to be at least partially at fault and waiver is precluded when, in light of all of 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 the debt arose due to administrative error does not entitle an employee to waiver or relieve him of the responsibility to verify the correctness of the payments he receives. In addition, the fact that an employee has pay sent directly to a bank does not relieve the person of the responsibility of verifying his statements and questioning any discrepancies. *See* DOHA Claims Case No. 97011408 (June 10, 1997), citing *MS1 Johnny Singletary, USN (Ret)*, B-254328, Nov. 17, 1993. Moreover, a person who expects to receive a substantial direct deposit should be able to articulate an objective basis for his belief that he expected to receive something approximating the amount involved. *See* DOHA Claims Case No. 01010801 (February 2, 2001).

In this case, the employee's bank statement would have indicated that he received a payment just after the PPE June 17,

2000, then another payment just after the close of the PPE July 1, 2000. As the Settlement Certificate indicated, the second payment closely approximated the amount and timing of the payment that the employee would have received if he had continued in his overseas Army employment. Apparently, it was also deposited to the same account that the employee had used to receive regular pay day deposits. This should have prompted the employee, at least, to investigate the facts and determine whether these two payments were payment for his TQSA claim. The employee took a risk when he did not review his overseas bank account routinely. If he had, by his own admission, he would have known of the two payments (not one) and questioned them.

Additionally, as indicated above, the DFAS administrative report raises substantial questions about whether the employee reasonably expected to receive approximately $2,900 in TQSA. Our Office must base decisions on substantial, objective evidence. DFAS provided a copy of the employee's worksheet, a document that indicates that the employee reasonably expected to receive $1,168.41. The employee provided no evidence, other than his own statement, suggesting that he reasonably expected to receive $2,900 in TQSA. It is well-established that on disputed questions of fact between the claimant and the administrative agency, we accept the statement of fact furnished by the responsible agency, in the absence of clear and convincing contrary evidence. *SeeMcNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 419 (1978).

Conclusion

We affirm the Settlement Certificate.

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. In his appeal, the employee contends that DOHA was prejudiced against his waiver request because our adjudicators incorrectly believed that the character of his service was negative. This assumption is without foundation as explained below. He also notes that our Settlement Certificate incorrectly reported that he worked for the Navy, not the Army. Our adjudicators were confused by the reference to the "Department of the Navy" in Block 5 of the Notification of Personnel Action (SF 50), but Block 46 indicates that Army was his employer.

2. In its administrative report, DFAS stated that the net payment of $1,752.24 would have been similar to the regular net payments that the employee had previously received for regular overseas paychecks.