

KEYWORD: General; waiver of indebtedness

DIGEST: Under 5 U.S.C. § 5584, waiver is precluded when an employee is aware that he is being overpaid. The employee does not acquire title to any excess payments merely because the government has committed an administrative error. He has the duty to hold the overpayment for the eventual repayment to the Government.

CASENO: 02032601

DATE: 05/13/2002

May 13, 2002

In Re:

Redacted

Claimant

Claims Case No. 02032601

CLAIMS APPEALS BOARD DECISION

DIGEST

Under 5 U.S.C. § 5584, waiver is precluded when an employee is aware that he is being overpaid. The employee does not acquire title to any excess payments merely because the government has committed an administrative error. He has the duty to hold the overpayment for the eventual repayment to the Government.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No.01111904, dated December 17, 2001, as amended, in which we denied in part the waiver request of a civilian employee. The debt arose out of payments of locality pay to which the employee was not entitled.

Background

The record indicates that on March 26, 2000, a civilian employee of the Air Force was transferred from McClellan Air Force Base (AFB) in California, to Hill AFB in Utah, due to the closing of McClellan AFB. As a result of the transfer, the employee was reduced in grade from a Wage Supervisor (WS) 10, step 5, to a General Schedule (GS) 9, step 10, on March 26, 2000. However, on April 9, 2000, the employee was selected for a GS 11 position. When the Notification of Personnel Action Standard Form (SF) 50 for the new position was processed, it erroneously showed that the employee was entitled to pay retention rather than grade retention, beginning March 26, 2000. As a result of this error, the employee erroneously received locality pay in addition to his base pay from March 26, 2000, through August 11, 2001. The employee made numerous inquiries regarding his entitlements to the locality pay during this period, but was assured that he was receiving the correct amount. However, on April 10, 2001, the employee was contacted by the Defense Finance Accounting Service (DFAS) and informed that he was being overpaid as he had suspected. Despite the discovery of the overpayments, DFAS continued to overpay the employee through August 11, 2001. This led to a total overpayment of \$4,355.20.

In the Amended Settlement Certificate No. 01111904, we waived \$3,283.20 of the debt that the employee incurred prior to receiving notification from DFAS that he had been overpaid. Further, we denied waiver of the \$1,072.00 he received after DFAS had notified him that he was receiving overpayments. The employee now appeals our determination to deny the \$1,072.00, arguing that his debt should be waived because it was created through administrative error, and another employee in his office has not had to repay similar overpayments.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances made to a Federal 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). On the other hand, a waiver cannot be granted if there is any indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee, or any other person having an interest in obtaining the waiver. The standard employed to determine whether a member was at "fault" in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement. *See DOHA Case No. 99111916* (December 8, 1999). When an employee is aware that he received an erroneous overpayment, the employee should be prepared to return the excess amount to the government. *See B-234731*, June 19, 1989. An employee cannot reasonably expect to retain such an overpayment, absent official notice that the payment was correct.

While we recognize that the erroneous payments in the instant case were due to administrative error and that the employee questioned the appropriate officials about the amount of the payments, those facts, by themselves, do not entitle the employee to waiver. *See DOHA Claims Case No. 99070513* (August 16, 1999). It is unfortunate that the employee had to seek assistance from his Congressman in order to obtain an accounting of his entitlements. However, he has acknowledged that he was uncertain of his entitlement to the locality pay. Since he was notified on April 10, 2001, that he was receiving overpayments, he should have retained the subsequent overpayments for the eventual repayment to the government. He did not acquire title to the excess amount. Therefore, waiver is not appropriate.

Further, we have consistently held that each case should be considered on the basis of its own merits. *See B-239895*,

February 14, 1991. We have no authority to investigate the employee's accusations that another employee has received similar overpayments and is not repaying them. We can only review the case at hand.

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

