

KEYWORD: General; waiver of indebtedness

DIGEST: When an employee is aware or should be aware that he has received an overpayment, he does not acquire title to the excess amounts, and he has a duty to hold the money for eventual repayment. In such circumstances, waiver is not proper under 5 U.S.C. § 5584.

CASENO: 02040402

DATE: 05/09/2002

May 9, 2002

In Re:

Redacted

Claimant

Claims Case No. 02040402

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware or should be aware that he has received an overpayment, he does not acquire title to the excess amounts, and he has a duty to hold the money for eventual repayment. In such circumstances, waiver is not proper under 5 U.S.C. § 5584.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 01030702, dated March 30, 2001, in which we denied the waiver request of a civilian employee when the employee was paid at the wrong hourly rate following reclassification of his job.

Background

The record shows that a civilian employee's position was reclassified from a General Schedule employee to a Wage Board employee, effective February 2, 1999. Due to an administrative error, the Human Resource Office was late in setting the employee's locality rate. This resulted in an overpayment of \$295.68 from February 13, 1999, through March 19, 1999. The employee was aware of the overpayment and notified the appropriate officials to have the overpayments stopped immediately after receipt.

In DOHA Settlement Certificate No. 01030702, we denied waiver of the \$295.68 overpayment. The employee now appeals our determination, arguing that his debt should be waived because other people in a similar situation have not had to repay the overpayments.

Discussion

Under 5 U.S.C. § 5584, this Office may 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). 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. 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.

In the instant case, while we recognize that the erroneous payments were due to administrative error and that the employee informed an official of the error, those facts, by themselves, do not entitle an employee to waiver. *See* DOHA Claims Case No. 01092001 (October 29, 2001); *see also* DOHA Claims Case No. 99070513 (August 16, 1999). Here, the employee did not acquire title to the overpayment of \$295.68.

We have no documentation regarding the employee's accusations that other people have received similar overpayments and are not repaying them, nor do we have the ability to investigate this claim. We have consistently held that each case should be considered on the basis of its own merits. *See* B-239895, February 14, 1991. ⁽¹⁾ Therefore, 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

1. While the cited case addresses a different type of pay issue, the principle that each case must be considered individually applies.