

KEYWORD: General; waiver of indebtedness; leave without pay

DIGEST: When an employee who is on leave without pay (LWOP) receives a payment, he has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government.

CASENO: 02052002

DATE: 8/27/2002

August 27, 2002

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In Re:

Redacted

Claimant

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Claims Case No. 02052002

## CLAIMS APPEALS BOARD DECISION

### DIGEST

When an employee who is on leave without pay (LWOP) receives a payment, he has a duty to question the accuracy of the payment and hold the overpayment for the eventual refund to the government.

### DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 02042602, in which we disallowed waiver of \$9,758.96 of the employee's debt. The employee seeks waiver of the entire amount.

### Background

The administrative record indicates that the employee suffered from a medical condition that hindered his ability to

perform in his position. Therefore, the employee requested to be placed in leave without pay (LWOP) status as of October 18, 1999, while awaiting approval of disability retirement. Due to a computer error, he was erroneously paid salary from February 12, 2000 through April 8, 2000, totaling \$9,758.96, as though he were on annual leave instead of LWOP. (1) When the error was discovered, the employee was re-credited with the annual leave he used during that period. The employee's disability retirement was approved in May 2000, and made retroactive to October 18, 1999. (2)

The Defense Finance and Accounting Service (DFAS) notified the employee of the overpayment by letter dated February 20, 2001. The employee then requested waiver of the debt based upon the fact that the error occurred through an administrative error and that financial difficulties would hinder his ability to repay the debt. DFAS denied waiver and the employee appealed DFAS's decision to our office.

In Settlement Certificate No. 02042602, we again denied waiver of the debt. Our determination was based upon the fact that the employee received regular salary for the period January 30, 2000, through April 8, 2000, after having entered LWOP status on October 18, 1999. Since the employee received regular salary payments after "retirement", the Settlement Certificate reasoned that the employee should have been aware that he was not entitled to the payments. Therefore, he should have held the overpayment for the eventual repayment to the government.

The employee appeals the determination in the Settlement Certificate based upon several arguments. He has provided us with leave and earning statements that indicate he was using annual leave during the period of the overpayment. We have since learned that while the employee's retirement was effective as of October 18, 1999, the decision to approve retirement beginning on that date was not made until May 2000, as noted above. The employee further asserts that he was due retroactive payments at that time due to his disability retirement and that his medical condition prohibited him from monitoring his finances closely. In support of his application for waiver, the employee provided letters from several physicians regarding his medical condition.

## 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). However, 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. An employee is considered to be at least partially at fault, and waiver is precluded, when he receives a significant unexplained increase, or otherwise knows, or reasonably should know, that an erroneous payment has occurred and fails to make inquiries or bring the matter to the attention of the appropriate officials. *See* DOHA Claims Case No. 99010416 (February 18, 1999). (3) In such circumstances, collection of the erroneous payment is neither against equity and good conscience nor contrary to the interest of the United States. *See* DOHA Claims Case No. 97011409 (June 6, 1997).

While we agree that the overpayment was caused by administrative error, the existence of administrative error does not by itself entitle a member to waiver. Most erroneous payments involve administrative error. The employee had no reasonable expectation he was entitled to pay after he requested LWOP and before the approval of his retirement. We have consistently held that the fact that the government was partially at fault in the accrual of a debt does not provide a

basis for waiver, since an employee who knows or should know that he is receiving erroneous overpayments does not acquire title to the excess amounts and has a duty to hold the overpayment for eventual repayment to the government. *See* DOHA Case No. 01092001 (October 29, 2001); DOHA Claims Case No. 99111916 (December 8, 1999), affirmed by Deputy General Counsel (Fiscal), December 12, 2000.

We are sympathetic to the fact that the employee in this case was suffering from a serious medical condition; however, he remains responsible for monitoring his financial affairs. The medical documentation provided by the employee suggest that the employee was not capable of "working in an industrial environment in close proximity to machinery and/or energized electrical circuits" due to his condition, but there is no medical evidence in the file that suggests that the employee was unable to keep track of his financial affairs. While the employee may have been confused, he should have known that he was not entitled to payments after he had entered LWOP status. If he was confused, he should have inquired into the validity of the payments. While he states that he expected retroactive payments due to his retirement, he should not have expected any payments until after his retirement was approved in May 2002. Therefore he did not acquire title to the money and had a duty to hold the money for eventual repayment. *See* DOHA Case No. 01092001, *supra*. Thus, it is not against equity and good conscience to recover such an indebtedness.

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. [\(4\)](#)

/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. The gross amount of the erroneous payments originally totaled \$11, 700.00 but was reduced to \$9,758.96 after a credit of \$1,941.04 was applied to the employee's account.
2. After the employee's retirement was approved, he received a lump sum leave payment for his leave.
3. While this decision involves a waiver request from a military member under 10 U.S.C. § 2774, the same waiver standards (4 C.F.R. § 91.5(b) (1996)) also apply to civilian employees seeking waiver under 5 U.S.C. § 5584 .
4. While the reasoning in the Settlement Certificate was based upon a different interpretation of the facts, the ultimate decision to deny waiver is affirmed.