KEYWORD: General; waiver of indebtedness

DIGEST: Waiver is inappropriate to relieve an employee for an indebtedness that resulted when the employee was re-employed following a reduction-in-force and continued to collect severance pay simultaneously with the salary from her new appointment.

CASENO: 02072501

DATE: 8/7/2002

DATE: August 7, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02072501

CLAIMS APPEALS BOARD DECISION

DIGEST

Waiver is inappropriate to relieve an employee for an indebtedness that resulted when the employee was re-employed following a reduction-in-force and continued to collect severance pay simultaneously with the salary from her new appointment.

DECISION

An employee of the Army appeals the July 2, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 02052301, in which our Office sustained the decision by the Defense Finance and Accounting Service (DFAS) to deny waiver of the employee's indebtedness. The employee's indebtedness arose from the erroneous overpayment of severance pay.

Background

The record shows that the employee, a GS-7, Step 8, was involuntarily separated due to a reduction-in-force (RIF) from her civilian position with the Department of the Air Force effective September 23, 2000. She was entitled to $34,756.80 in severance pay, to be paid at the rate of $668.40 per week for a 52-week period beginning September 24, 2000. Effective June 18, 2001, the employee was appointed to and accepted a civilian position as a GS-4, Step 10, with the Department of the Army. As a result, the employee's entitlement to severance pay was suspended,[(1)] but due to administrative error, the government continued to pay her through July 28, 2001, causing an overpayment of $4,010.40. DFAS believes that the employee should have been aware that she was not entitled to receive further severance pay because the June 18, 2001, *Notification of Personnel Action* (Standard Form (SF)-50) stated that severance pay was suspended by the Air Force until the appointment terminates. DFAS also believes that an employee with 20 years of service reasonably should have been aware that she was not entitled to salary and severance pay during the same period of time.

The employee seeks waiver because the erroneous payment was due to administrative error, and she did not realize that she was not entitled to severance pay after she was re-employed. She points out that the SF-50 of September 23, 2000, stated that she would receive severance pay for one year, and it did not indicate that such pay would stop if she was re-employed. She also points out that she reported the error as soon as she received her June 18, 2001, SF-50, which was not until July 28, 2001. The employee noted that her new position was temporary in nature and that she was appointed to a grade below that from which she had been separated. The employee states she accepted the severance pay in good faith, without intent to defraud the government, and that she is in financial hardship.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances if repayment 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. The standard we use to determine fault is whether a reasonable person would or should have known that she was receiving pay in excess of her entitlements. *See Standards for Waiver,* 4 C.F.R. § 91.5 (1996). An employee is not entitled to waiver as a matter of right merely because she was overpaid due to administrative error. *See* DOHA Claims Case No. 02050613 (May 23, 2002) and decisions cited therein.

We have no reason to doubt the employee's statement that she acted in good faith and had no intention of defrauding the government. However, we believe that DFAS reasonably found that she was at least partially at fault by not questioning her continued entitlement to payment of severance pay once she accepted re-employment.

The Comptroller General's decision in B-190643, July 6, 1978, is a comparable situation involving re-employment after RIF where waiver of salary overpayments was disallowed. In that matter, the employee, formerly a GS-11, step 6, was re-employed eight months later in the grade of GS-9, step 10, but the government erroneously paid her at the rate of a GS-11, step 6 as soon as she was re-employed. Throughout the appeal, the employee argued that she reasonably believed that she would be entitled to her former rate of pay under the theory of "saved pay." Significantly, at one point in her appeal, the employee also argued that she did not realize that her severance pay would be discontinued upon re-employment. Later, the employee stated that she knew her severance payments would be discontinued, but was misled

into believing that she was entitled to saved pay. The Comptroller General noted that the employee was given written notice of her new grade and salary when she was re-employed, and despite the administrative error in paying her as a GS-11, her salary as a GS-9 was inconsistent with the pay she was receiving. A reasonable person with more than 20 years of service would have promptly inquired as to the correctness of her pay.

In the current case the applicant knew that she was re-employed as a GS-4, step 10, on the day she was re-employed, even if she did not receive the re-employment SF-50 until over a month later. Additionally, she continued to receive payments equal to the salary rate of a GS-7, step 8. In effect, the employee simultaneously received both the full salary of a GS-4 and the full salary of a GS-7 during the period June 18 to July 28, 2001. Even if the employee rationalized that she deserved the salary of a GS-7 for the entire year in which severance pay was available, she could not have reasonably believed that she was entitled to receipt of the equivalent of two full salaries during the same time period. The total of both benefits substantially exceeded the GS-7 rate. In this respect, the equities in favor of the employee here are less substantial than those in favor of the employee in B-190643, *supra*. To obtain waiver, a member must be able to reasonably articulate a basis for expecting payment in the amount that she erroneously received. *Compare* DOHA Claims Case No. 01091310 (October 5, 2001), and DOHA Claims Case No. 99033117 (April 15, 1999). As DFAS suggested in its April 22, 2002, letter to the employee, a reasonable person with the employee's experience should have questioned her pay when dual compensation is apparent.

Financial hardship is not a basis on which we can grant a waiver. *See* DOHA Claims Case No. 02050613, *supra* and decisions cited therein. DFAS may take the employee's hardship into consideration in determining an appropriate repayment plan.

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 _____

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. *See* Volume 8, *DoD Financial Management Regulation,* Chapter 3, *Civilian Pay Policy and Procedures,* ¶ 030804 (August 1999), and 5 U.S.C. § 5595(d).