

DATE: March 31, 2004

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In Re:

[REDACTED]

Claimant

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Claims Case No. 04032919

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Generally, an employee in a leave without pay status is not relieved of her responsibility of verifying bank statements and questioning unexpected deposits to her account just because she expects a disability retirement or other similar payments to be deposited directly to her account.

### DECISION

A civilian employee of the Department of Defense (DoD) appeals the June 24, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03051407 in which our Office sustained the Defense Finance and Accounting Service's (DFAS) denial of the employee's request that DoD waive a salary overpayment.

### Background

The record indicates that effective April 2002, the employee was placed in a leave without pay (LWOP) status. However, due to administrative error, the employee was paid salary for the pay period ending November 16, 2002, causing an overpayment of \$1,061.60. <sup>(1)</sup> In the Settlement Certificate, our Office found that the employee, who was in a LWOP status, and who had no paperwork (*e.g.*, a leave and earning statement) to show the basis of the direct deposit of salary to her account that proved to be erroneous, should have verified the propriety of the payment before she spent the funds. The Settlement Certificate also noted that the employee's Civil Service disability retirement was not approved until December 2, 2002, which was ten days after she received the erroneous salary payment.

On appeal, the employee disputes the finding that her disability retirement was not approved until December 2, 2002, offering proof that the Office of Personnel Management approved it in a letter dated October 17, 2002. The employee also stated that she expected a \$3,211 Social Security payment in the October-November period. A bank statement provided by the employee also shows that a direct deposit of \$4,367 from the US Treasury Civil Service Fund was directly deposited to her account on November 8, 2002, and a separate direct deposit of \$690.31 from DFAS-Cleveland, Federal Salary Fund was deposited to her account on November 22, 2002. The employee also explained that she was not working, and she was "very ill." In effect, she argues that she could not have been expected to validate the basis of the direct deposit made to her account from DFAS.

### **Discussion**

Under 5 U.S.C. § 5584, we may waive collection of erroneous payments of pay and certain allowances made to specified federal employees, if collection would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. *See* 5 U.S.C. § 5584(b)(1) and the *Standards for Waiver*, 4 C.F.R. §91.5(b) (1996). The standard employed to determine whether an employee was at "fault" in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that she was receiving more than her entitlement and made inquiries or brought the matter to the attention of the appropriate officials.

For purposes of this appeal, we agree that the erroneous payment was 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. We also agree that she reasonably expected a disability retirement payment. However, administrative error, by itself, does not entitle an employee to a waiver. *See* DOHA Claims Case No. 04031001 (March 17, 2004).<sup>(2)</sup> The Settlement Certificate also noted that the fact that the employee has pay sent directly to a bank does not relieve her of the responsibility of verifying her statement and questioning any discrepancies. *See* DOHA Claims Case No. 97011408 (June 10, 1997). An employee has a responsibility to monitor her bank account, and when she receives an unexplained salary payment, she should be aware of the strong possibility that it is erroneous and promptly bring it to the attention of the appropriate agency officials. *See* DOHA Claims Case No. 02022603 (April 17, 2002). Since the employee did not do so, we consider her to be at least partially at fault in this matter. As the employee's bank statement clearly indicated, she obtained one deposit for her disability retirement, and another separate deposit from DFAS for federal salary which she had no reasonable expectation of receiving.

The employee raises the issue of her health as a factor that would have prevented her from monitoring her account and tending to her financial affairs. We have previously held that waiver may be appropriate where an employee can establish by clear and convincing evidence, in the form of medical records or other proof, that she was in such poor health that it was unlikely that she knew or could have known of the overpayment, or that she was otherwise unable to attend to ordinary financial affairs. *See* DOHA Claims Case No. 04031001, *supra*; and DOHA Claims Case No. 03102401 (October 28, 2003). The employee's bare assertion that she was too ill to monitor her account falls far short of the clear and convincing evidence standard that she must meet.

### **Conclusion**

We affirm the Settlement Certificate for the reasons explained herein.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

1. The net amount paid to the employee was \$690.31.
2. While this decision involves a uniformed service member and waiver under 10 U.S.C. § 2774, the same standards apply to both uniformed service members and civilian employees seeking waiver under 5 U.S.C. §5584.