

KEYWORD: General; waiver of indebtedness; LQA

DIGEST: A debt that arises due to a reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the advance LQA payment was proper when made. The fact that the debt resulted merely because of a decline in exchange rates between the dollar and the local currency does not make an advance of LQA erroneous if it was not otherwise erroneous when paid.

CASENO: 02080601

DATE: 8/27/2002

DATE: August 27, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02080601

CLAIMS APPEALS BOARD DECISION

DIGEST

A debt that arises due to a reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the advance LQA payment was proper when made. The fact that the debt resulted merely because of a decline in exchange rates between the dollar and the local currency does not make an advance of LQA erroneous if it was not otherwise erroneous when paid.

DECISION

A Department of the Army employee appeals the April 9, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 02030514, in which our Office agreed with the Defense Finance and Accounting Service (DFAS) and found the employee's waiver request may not be considered under the provisions of 5 U.S.C. § 5584.

Background

The record shows that the employee was stationed in Korea, and was entitled to a living quarters allowance (LQA). On October 12, 2000, he entered into an approved 24-month lease for quarters for 86,400,000 Korean Won. On October 13, 2000, civilian personnel officials (CPAC) in Seoul approved his LQA for that amount. The CPAC converted the Won amount to \$78,119.34 (at the then market rate of 1,106 Won per dollar) and advanced the LQA to the employee by depositing \$78,119.34 into the employee's account. The employee converted this sum to 86,400,00 Won and on October 26, 2000, paid the real estate agent.

In January 2001, the employee was offered, and he accepted, a promotion and new position with another agency in Virginia, with a reporting date of arch 26, 2001. The employee's LQA stopped on February 27, 2001, and in accordance with the Seoul CPAC's reconciliation of the employee's LQA account for the lease period, the employee owed the government \$64,101.03. The employee emphasizes that this amount was incorrectly calculated: if this amount was converted to Won at the original conversion rate of 1,106 Won per dollar, the total Won amount owed would have been 70,895,740 Won. On March 13, 2001, the employee received a refund of 70,580,000 Won from the real estate agent, an amount that he converted on March 14, 2001, to \$54,001.53 at the then current conversion rate of 1,307 Won to the dollar. The employee says he added \$241.37 to the \$54,001.53, and he paid \$54,242.80 to DFAS. [\(1\)](#)

The employee contends that the only reason that he has an indebtedness is that the government chose to convert the approved Won amount to dollars. He states that the debt he owes is not due to an overpayment but due to currency fluctuation. In his appeal, the employee states that his request that the government waive the LQA refund (\$9,858.73 by his latest calculation; \$9,858.23 by ours) is based on 5 U.S.C. § 5922(b).

In response to the employee's appeal, DFAS asks us to clearly state that the employee is responsible for contacting the head of his "employing agency," not DFAS, to obtain relief under 5 U.S.C. § 5922(b).

Discussion

Our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 02010906 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999). Under Section 5584 we may waive a claim for an erroneous overpayment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See also* Standards for Waiver, 4 C.F.R. § 91.5(b) (1996).

It is uncontested that there was no erroneous payment of pay and allowances here; the LQA amount was proper when advanced. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923 and by implementing regulations issued by the Department of State. [\(2\)](#) Under 5 U.S.C. § 5922(b) and Section 113.3 of the DSSR, LQA may be paid in advance in US dollars, as it was here. Under Section 113.4 of the DSSR a reconciliation occurs upon transfer, and any balance from the

advance after allowed expenses which has not been repaid shall be recovered in US dollars.⁽³⁾ We have held that 5 U.S.C. § 5584 does not apply merely because there were excess advances of LQA unless there is an indication that the LQA payment was otherwise erroneous when made. *See generally* DOHA Claims Case No. 02010906, *supra*; DOHA Claims Case No. 99012605 (February 3, 1999); and DOHA Claims Case No. 97111908 (January 9, 1998). By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C. § 5584. It is unfortunate for the employee that the value of Korean currency declined against the dollar, but that did not make the advance erroneous when paid.

Waiver, if appropriate, may be considered under 5 U.S.C. § 5922(b) and under paragraph 113.4 of the Department of State's *Standardized Regulations* (DSSR), but we take no position concerning whether the currency fluctuation here would be considered "unusual circumstances."⁽⁴⁾ As in DOHA Claims Case No. 02010906, *supra*, we can only suggest that the employee contact his former employing agency, and we ask DFAS, to the extent that it can do so, to assist the employee in determining the identity of the deciding official.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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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1. The record does not explain the basis of the \$241.37. It appears to be the value of rent the employee owed the government when he was receiving temporary quarters subsistence expenses and was therefore not eligible to be reimbursed for LQA.
2. See the Department of State's Standardized Regulations (DSSR) for civilian employees living overseas. A current version is posted at www.state.gov/www/perdiems/dssr/regs000.html. See also State Department Standardized Regulations at Appendix I of Volume 2 of the Joint Travel Regulations (JTR). Current versions of the JTR are obtainable through www.dtic.mil/perdiem/trvlregs.html. The DSSR is supplemented in this area by Subchapter 1250 of the Department of Defense Civilian Personnel Manual, DoD 1400.25-M (December 1996).
3. Contrary to the employee's suggestion that agency officials voluntarily chose to recover in US dollars, the primary controlling regulation requires it.
4. Subparagraph 113.4 of the DSSR, provides that the agency head may waive recovery in whole or part. Waivers are granted after transfers in emergency circumstances, directed transfers on short notice, departure due to involuntary separation or other equally unusual circumstances. The head of the agency must satisfy himself that the employee has taken all reasonable steps to dispose of his quarters to others, including efforts to sublease or assign even at financial sacrifice, and that the unpaid balance did not result from any action within the employee's control.