

July 30, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03072812

## CLAIMS APPEALS BOARD DECISION

### DIGEST

When an employee is aware or should be aware that she is receiving payments in excess of her entitlements, she does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

### DECISION

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 03061103, dated July 10, 2003, which granted in part and denied in part an employee's application for waiver of an erroneous overpayment of pay.

### Background

The record shows that the claimant is an employee of the Department of the Air Force. When she was hired, her pay grade was erroneously established at GS-5, step 7, instead of GS-5, step 6. This administrative error resulted in a \$635.20 overpayment to her for the period December 26, 2001, through September 7, 2002. When she was hired, she had questioned the correctness of her pay grade, and her civilian personnel office had advised her in a January 25, 2002, e-mail that the GS-5, step 7 designation was correct. Only later was the error discovered, and the employee was officially notified on October 31, 2002, that the correct pay grade should have been GS-5, step 6.

However, during the September 8, 2002, through September 21, 2002, pay period, the employee's hourly salary was again erroneously increased--this time by a significant amount--and she was also erroneously issued a retroactive payment with respect to several previous pay periods. This resulted in a \$1,992.10 overpayment to her for that period. Because of this error, her leave and earnings statement (LES) for the that period showed an increase in gross pay from \$1,244.80 to \$3,281.10. She states that after reviewing her LES she contacted her personnel office to inquire as to why she was being overpaid such a large amount of money. In response to that inquiry, she indicates that she was verbally advised to wait until she received official notification that she had been overpaid.

Finally, during the period September 22, 2002, through December 14, 2002, the employee's hourly salary was again erroneously increased, causing an overpayment to her of \$246.35. As a result of the government's multiple errors, the

overpayments to the employee totaled \$2,874.05. However, after administrative adjustments the amount owed was reduced to \$2,126.75.

In the Settlement Certificate, our Office granted waiver with respect to the \$635.70 erroneous overpayment for the period December 26, 2001, through September 7, 2002. It denied waiver with respect to the \$1,491.05 erroneous overpayment for the period September 8, 2002, through December 14, 2002. On appeal, the employee seeks reversal with respect to the \$1,491.05 erroneous overpayment, and asks us to investigate all of the information provided by the Defense Finance and Accounting Service (DFAS) with respect to her salary.

### Discussion

Pursuant to 5 U.S.C. § 5584, we have the authority to waive the collection of erroneous payments of pay and allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard we employ to determine fault is whether a reasonably prudent person knew or should have known that she was receiving payments in excess of her entitlements. Our decisions indicate that waiver is not appropriate when an employee is aware that she is being overpaid, or had no reasonable expectation of payment in the amount received. *See DOHA Claims Case No. 02032201* (April 2, 2002) citing *DOHA Claims Case No. 97062629* (July 17, 1997). An employee is considered to be aware of an erroneous overpayment when she possesses information which reasonably suggests that the validity of the payment may be in question. Once she has received information which reasonably suggests that the validity of a payment may be in issue, she should be prepared to return to the government any amounts received from that time forward. *Id.*

In this case, the employee was unaware of the erroneous nature of the overpayments for pay prior to her receipt of her LES for the pay period September 8, 2002, through September 27, 2002. Indeed, she had previously questioned the correctness of her pay grade, and had been advised in writing that it was valid. Therefore, it was reasonable to conclude that she accepted the overpayments from December 26, 2001, through September 7, 2002, in good faith, and waiver of the \$635.70<sup>(1)</sup> in overpayments occurring during that time period was appropriate.

However, with the receipt of the LES for the September 8, 2002, through September 21, 2002, pay period, which showed a significant increase in pay, the employee was in possession of sufficient information for a reasonable person to conclude that the validity of her pay rate was in question. Under such circumstances, the employee has the burden of obtaining clear and thorough advice in writing from an appropriate official, or continuing to press for an explanation of the discrepancy in the information before her. In the meantime, she does not acquire title to any questionable overpayments merely because the government made an administrative error, and should have held them until final, official determination was made that they were hers, or until the government determined the amount of overpayment and asked for repayment. *Id.* Since she knew that she was receiving questionable payments, waiver of the \$1,491.05 in overpayments made to the employee from September 8, 2002, through December 14, 2002, is not proper. *Id.*

It is unfortunate that the employee's pay account was subject to the inaccuracies noted above and in the employee's appeal. However, our Office has no authority to conduct the investigation requested. We suggest that the employee obtain a more thorough explanation from DFAS officials.

### Conclusion

We affirm the Settlement Certificate.

\_\_\_\_\_/s/  
 Michael D. Hipple  
 Chairman, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_  
William S. Fields  
Member, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_  
Jean E. Smallin  
Member, Claims Appeals Board

1. In her appeal, the employee states that the \$635.70 amount which we waived has already been deducted from her pay. If that is the case, it is our expectation that that amount will, in time, be reimbursed to her, or credited to her outstanding debt, by DFAS.