

July 15, 2004

In Re:

[Redacted]

Claimant

Claims Case No. 04070701

CLAIMS APPEALS BOARD DECISION

DIGEST

Waiver under 5 U.S.C. § 5584 is not appropriate when an employee knows or should know that he has received an overpayment. When an employee receives a payment that he knows is erroneous or at least questionable, he has a duty to bring the payment to the attention of the proper authorities. He also has a duty to hold the excess amount until he receives a thorough explanation of the overpayment or until he is asked to return it.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 04032908, dated April 13, 2004, which denied in part the waiver request of a civilian employee. The employee's debt arose when he received duplicate retroactive salary payments.

Background

As of June 18, 2000, the employee was promoted to a position at the wage grade of WG-11, step 4 (\$19.60 per hour). His pay should have been set at WG-11, step 5. Therefore, the employee was underpaid in the amount of \$1,666.58 for the period from June 18, 2000, through June 2, 2001. On June 22, 2001, he received a retroactive payment of \$1,922.41, causing an overpayment of \$255.83. On August 3, 2001, the employee received an additional retroactive payment of \$1,356.35. In Settlement Certificate 04032908, this Office waived the \$255.83 overpayment received in June 2001. Therefore, the amount at issue here is \$1,356.35, the amount of the second retroactive payment. The employee indicates that he did not know the correct amount of retroactive pay due him. He states that he questioned the second retroactive payment, but got no response.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances to civilian employees if collection is against equity and good conscience and not in the best interest of the United States,

provided there is no indication of fraud, fault, misrepresentation, of lack of good faith on the part of the employee. *See Standards for Waiver*, 4 C.F.R. § 91.5 (1996). Waiver is not appropriate if the employee knew or should have known that he was receiving payments in excess of his entitlements. *See* DOHA Claims Case No. 03072812 (July 30, 2003); and DOHA Claims Case No. 01102310 (November 5, 2001). If an employee suspects that he is being overpaid, he has a duty to notify the appropriate authorities of the questionable payments. He should retain the excess amounts until he receives a detailed explanation for the payments or until he is asked to return them. *See Id.* .

In the case before us, the employee did not know the exact amount of retroactive pay he would receive. Therefore, the erroneous portion of the first retroactive payment was properly waived. The employee acted appropriately in calling the second retroactive payment to the attention of officials. When he did not receive a response, however, he should have continued to press for an explanation of the second payment. In the meantime, he had a duty to hold the erroneous payment until he received a thorough explanation of the payment or until he was asked to return it. *See* DOHA Claims Case No. 03072812, *supra*; DOHA Claims Case No. 02032601 (May 13, 2002); and DOHA Claims Case No. 01102310, *supra*.

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