

DATE: August 23, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05072804

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware or should be aware that she is receiving payment 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 is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 05061705, dated June 28, 2005, in which DOHA waived \$1,404.00 of the \$2,877.60 that the government erroneously overpaid to her.

Background

On June 28, 2004, the employee was hired by the Air Force. Her annual salary was erroneously established as \$39,438.00, instead of \$36,620.00. As a result, during the period June 28, 2004, through January 22, 2005, the employee was overpaid \$1,404.00.

On January 22, 2005, the employee erroneously received a retroactive payment in the amount of \$736.80, which represented administrative uncontrollable overtime (AUO), for the period November 28, 2004, through January 8, 2005. She continued to receive AUO in the amount of \$245.60 per pay period from January 9, 2005 through February 19, 2005. ⁽¹⁾ As a result, she was overpaid \$1,473.60. The overpayments were discovered in April 2005.

In the Settlement Certificate, this Office waived \$1,404.00 of the employee's debt. We denied waiver of \$1,473.60, the portion of the debt caused by the erroneous payment of AUO. On appeal, the employee argues that the debt should be waived because it was caused by numerous administrative errors that she had no control over. She also states that she did question her entitlement to AUO and attaches documentation to support this. She argues that the debt should be \$932.38, not \$1,473.60; she contends that the Defense Finance and Accounting Office (DFAS) Civilian Pay Office collected \$541.22 of the overpayment from her March 11th and March 25th paychecks. Finally, the employee states that her debt should further be reduced because she did not receive her annual pay increase for a three-month period (January 2005 through March 2005).

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee, or any other person having an interest in obtaining the waiver. However, waiver is not appropriate if the employee knew or should have known that she was receiving payments in excess of her entitlements.

See DOHA Claims Case No. 04070701 (July 15, 2004). An employee is not entitled to waiver as a matter of right merely because she was erroneously overpaid due to administrative error. When an employee suspects error, she has a

duty to set the excess payments aside for possible repayment to the government.

In this case, the employee received leave and earnings statements (LES) during the entire period of overpayment that clearly listed the AUO payments. Beginning with her January 22, 2005 LES and on each subsequent LES through February 19, 2005, \$245.60 was listed for AUO under Current Earnings. On her January 22, 2005, LES, \$736.80 was listed for AUO under Retroactive Earnings. The documentation submitted on appeal reflects that she questioned the \$736.80 retroactive payment of AUO in a February 3, 2005, e-mail to the Chief of Affirmative Employment & Classification. ⁽²⁾ The Chief's subsequent e-mail response on February 3, 2005, informed the employee that a remedy ticket had been initiated with payroll in order to find out about the \$736.80 payment. Although the employee did question the AUO payment, the issue appears to have been left unresolved, and therefore, the employee should have set aside this AUO payment and the subsequent AUO payments until her entitlement to them was determined. In such a situation, the employee does not acquire title to the overpayments and waiver is not appropriate. *See* DOHA Claims Case No. 04082704 (September 20, 2004), DOHA Claims Case No. 04070701, *supra*, and DOHA Claims Case No. 03072812 (July 30, 2003).

As for the money the employee alleges DFAS collected from her salary in her March 2005 paychecks, this Office considers for waiver the gross amount of the debt. If collections have occurred, the balance owed will be adjusted accordingly. In addition, as for the employee's concern with not receiving her annual pay raise during the months of January 2005 through March 2005, we have been informally advised by DFAS that the pay error has been addressed.

The employee should contact DFAS with any accounting questions.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. During this period, the employee was overpaid for three pay periods in the total amount of \$736.80 (\$245.60 X 3 pay periods).
2. Within this e-mail, the employee also relates that she contacted DFAS - Customer Service in Pensacola about the payment and was referred to Hanscom's Civilian Personnel office.