

September 14, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05090603

CLAIMS APPEALS BOARD DECISION

DIGEST

Due to administrative error, an employee was paid at the incorrect hourly rate causing him to be overpaid. He was unaware he was being overpaid until he was notified in August 2004. Under 5 U.S.C. § 5584, the amounts he received before notification may be waived. However, the amounts he was paid after notification may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 05061604, dated June 27, 2005, in which DOHA waived \$38,120.80 of the \$44,848.00 that the government erroneously overpaid to the employee.

Background

On November 20, 2003, the employee was hired as a consultant. Due to administrative error, he was erroneously paid at the rate of \$53.03 per hour instead of \$25.00 per hour. As a result, the employee was overpaid \$44,848.00 during the period November 20, 2003, through September 18, 2004. On August 16, 2004, the employee was notified that he was receiving salary payments in excess of his entitlements.

In the Settlement Certificate, this Office waived \$38,120.80 of the employee's debt. We denied waiver of \$6,727.20, the portion of the debt that occurred after the employee was notified he was being overpaid. On appeal, the employee requests that this portion be waived. He admits that he knew he was being overpaid as of August 16, 2004, and promptly notified Washington Headquarters Service (WHS) when the salary error continued. Therefore, he believes he acted in good faith in accepting this portion of the overpayment. He also asks for guidance concerning repayment of the debt.

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. Waiver is inappropriate if the employee is aware he is being overpaid. *See* DOHA Claims Case No. 00030709 (April 28, 2000); and DOHA Claims Case No. 98081726 (October 29, 1998).

The Settlement Certificate properly waived collection of \$38,120.80, which represents the amount the employee received before he was notified he was being overpaid. Our Office properly denied waiver of the \$6,727.20, which is the amount that was paid to him after notification. An employee does not acquire title to the overpayments and has a duty to return the excess amounts to the government. *See* DOHA Claims Case No. 00030709, *supra*.

Finally, the employee should contact the Defense Finance and Accounting Service (DFAS) concerning repayment of the debt.

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