

KEYWORDS: waiver of indebtedness

DIGEST: Due to administrative error, an employee's salary was erroneously established, and as a result he was overpaid during the period February 20, 2005, through April 30, 2005. He was unaware that his salary was erroneously established until he was notified on April 6, 2005. Under 5 U.S.C. § 5584, the amounts the employee 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.

CASENO: 05110118

DATE: 11/29/2005

November 29, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05110118

CLAIMS APPEALS BOARD DECISION

DIGEST

Due to administrative error, an employee's salary was erroneously established, and as a result he was overpaid during the period February 20, 2005, through April 30, 2005. He was unaware that his salary was erroneously established until he was notified on April 6, 2005. Under 5 U.S.C. § 5584, the amounts the employee 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, DOHA Claims Case No. 05082910, dated September 26, 2005, which denied in part an employee's waiver request. The employee's debt arose when his salary was erroneously established.

Background

On February 20, 2005, the employee was promoted from a GS-9, step 3, to a GS-11,

step 1. Due to an administrative error, his salary was erroneously established as \$62,967.00 per year, instead of \$54,387.00 per year. As a result, during the period February 20, 2005, through April 30, 2005, the employee was overpaid in the amount of \$1,664.00.

In our Settlement Certificate, our Office waived the portion of the overpayment occurring during the period February 20, 2005, through March 19, 2005, in the amount of \$665.60. However, our Office denied waiver of the overpayment occurring during the period March 20, 2005, through April 30, 2005, in the amount of \$998.40 because the employee was notified that he was being overpaid on April 6, 2005.

In his appeal, the member argues that DOHA Claims Case No. 05072804 (August 23, 2005), cited as authority in the Settlement Certificate, is distinguishable from his case. He further states that the only reason why the error was discovered was from his "nagging suspicion" that he was being overpaid. He states that it is wrong to deny him waiver of a debt that was not his fault and was due to an administrative error that he continuously fought to get corrected.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances to employees, 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, fault, misrepresentation or lack of good faith on the part of the employee. The standard we employ to determine fault is whether a reasonable person would or should have known that he was receiving payments in excess of his entitlements. However, waiver is not appropriate when an employee is aware that he is being overpaid or has no reasonable expectation of payment in the amount received. *See* DOHA Claims Case No. 03072812 (July 30, 2003), DOHA Claims Case No. 02062401 (July 29, 2002), and DOHA Claims Case No. 02032601 (May 13, 2002).

In the case before us, it is clear that the erroneous payments were a result of administrative error and there is no indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee. However, an employee is not entitled to waiver as a matter of right merely because he was erroneously overpaid due to administrative error. *See* DOHA Claims Case No. 02062401, *supra*, and decisions cited therein. When an employee is aware that he received an erroneous payment, he should be prepared to return the excess amount to the government.

On April 6, 2005, the employee was notified by the civilian personnel pay office that he was being overpaid, specifically that he was not entitled to receive locality pay. In his appeal, the employee states that when he continued to receive locality pay after being told he was not entitled, he questioned the officials at his local personnel office and was told that he should be receiving locality pay. After receiving this conflicting information from his local personnel office, the employee should have held the questionable payments for further verification, especially since he had a "nagging suspicion" that he was being overpaid. In the meantime, he did not acquire title to the erroneous overpayments and should have held them until a final

determination was made that they were his or until he was asked to repay them. Since he knew

he was receiving questionable payments, waiver of the \$998.40 is not appropriate. *See* DOHA Claims Case No. 03072812, *supra*, DOHA Claims Case No. 02062401, *supra*, and DOHA Claims Case No. 02032601, *supra*.

Finally, the decision cited in the Settlement Certificate, DOHA Claims Case No. 05072804, *supra*, is analogous to the present case. In that case, the employee did question her receipt of certain payments. However, the issue was left unresolved, and the Board held that the employee should have set the payment aside until her entitlement to them was determined. In this case, the employee was informed on April 6, 2005, that he was being overpaid. Therefore, when he continued to receive locality pay, he should have held the overpayments until his entitlement to locality pay was determined.

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