

DATE: November 14, 2006

In Re:

[REDACTED]

Claimant

)

Claims Case No. 06111201

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

DECISION

A former employee of the United States Army requests reconsideration of the October 18, 2006, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06032717 in which our Office approved waiver of an erroneous payment of pay and allowances in the amount of \$744.54 and denied waiver in the amount of \$11,197.86. The former employee seeks waiver of the additional \$11,197.86.

Background

The record shows that the employee retired from Federal service on January 3, 2003. At that time, he was entitled to receive salary for 40 hours in the gross amount of \$995.60, which he subsequently received during the pay period ending January 11, 2003. Additionally, as reported in the October 18, 2006 decision, the employee was entitled to receive a payment for 425 hours of lump-sum annual leave in the amount of \$12,276.16 and a separation incentive payment in the amount of \$25,000, for a gross amount of \$37,276.16. On March 6, 2003, the employee received a payment in the gross amount of \$38,020.70, an amount that was \$744.54 in excess of the amount he should have received. Our Office waived the debt for the erroneous payment of \$744.54, and that waiver is not directly involved in this appeal.

The record also shows that on February 20, 2003, a Notification of Personnel Action (SF 50) was issued which retroactively corrected the employee's annual salary from \$47,405 to \$56,433 effective September 23, 2002. As a result, the Defense Finance and Accounting Service (DFAS) determined that the employee had been underpaid \$1,290 during the period September 23, 2002, through January 3, 2003. However, due to administrative error, DFAS erroneously paid the employee \$12,487.86, instead of \$1,290, causing an overpayment of \$11,197.86. The issue in this reconsideration is whether DOHA acted reasonably in denying waiver of the employee's debt of \$11,197.86.

In his reconsideration request, the employee states that he was not aware of the debt until two years after he retired and never received documentation on the \$12,487.86 payment. While he does not object to the waiver of \$744.54 in this Office's October 18, 2006, decision, he states that the correct amount of lump-sum leave hours owed to him was 454 hours, not 425 hours. Further, the employee argues that the retroactive salary increase as described in our Office's October 18, 2006, decision, would represent an increase of more than 19 percent, when, in fact, the proper increase was

only 8.63 percent (or \$24.89 per hour to \$27.04 per hour). The employee argues that these two errors demonstrate that our Office was working with inaccurate information, therefore, the \$11,197.86 assessment is circumstantially questionable.

Discussion

The issue in dispute here is the \$12,487.86 payment, and the propriety of denying waiver of the \$11,197.86 net indebtedness. As our Office advised the employee in the October 18, 2006 decision, waiver under 5 U.S.C. § 5584 does not apply automatically to relieve the debts of all employees who, through no fault of their own, receive an erroneous payment from the government. Debts are waived only when collection would be against equity and good conscience and not in the best interests of the United States. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5. In this case, there is no record evidence from the employee offering a plausible explanation and supporting documentation that demonstrates why he reasonably expected a payment of this magnitude, considering the other payments he received and the total amount he received.

The employee's attempt to cast doubt with regard to DOHA's decision not to waive the \$11,197.86 indebtedness, by raising potential errors with regard to the other payments is not persuasive. The October 18, 2006, decision mentions 425 hours of lump-sum annual leave owed to the employee at retirement and then mentions the amount of \$12,276.16. While 425 hours of lump-sum annual leave was part of the \$12,276.16 lump sum leave payment, an analysis of the total lump-sum leave payment indicates that the employee was paid for 454 hours. The amount of \$12,276.16 is exactly 454 hours multiplied by the rate of \$27.04 per hour (the hourly rate that the employee states was the appropriate rate). While the October 18, 2006, decision could have been more specific, the record shows that the employee was also paid for 29 hours of restored leave in addition to the 425 hours of annual leave. Concerning the other factor that the employee relies on to support his argument, the retroactive increase, copies of the SF-50 in the record support the retroactive annual salary increase as described above.

For the reasons stated above, we find that the decision to deny waiver of \$11,197.86 is reasonable, and the employee's request for relief is denied.

Conclusion

For the reasons stated herein, we affirm the October 18, 2006, decision to deny waiver of \$11,197.86. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board