

DATE: December 6, 2006

In Re:

[Redacted]

Claimant

)
Claims Case No. 06112735

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

An employee of the United States Air Force was erroneously paid the wrong annual salary. Because the employee did not question the unexplained increase in his salary, the employee is at least partially at fault, and waiver under 5 U.S.C. § 5584 is therefore precluded.

DECISION

An employee of the United States Air Force requests reconsideration of the November 15, 2006, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim

No. 06092704 in which our Office approved waiver of an erroneous payment of salary in the amount of \$90.97 and denied waiver in the amount of \$3,187.12. The employee seeks waiver of the additional \$3,187.12.

Background

The employee, an Electronics Engineer, GS-12, step 8, was entitled to received a retention allowance in the annual amount of \$7,229.00. His gross annual salary was established as \$81,936.00.⁽¹⁾ On March 30, 2005, a Notification of Personnel Action (SF-50) was issued adjusting the employee's retention allowance from \$7,229.00 to \$3,615.00, effective April 3, 2005. As a result, his annual salary was reduced from \$81,936.00 to \$78,322.00.⁽²⁾ The employee was correctly paid through June 25, 2005. However, on July 8, 2005, a SF-50 was issued erroneously increasing the employee's annual salary from \$78,322.00 to \$84,379.00,⁽³⁾ retroactive to May 1, 2005. As a result, the employee received a retroactive payment in the amount of \$925.83, which compensated him for the period May 1, 2005, through June 25, 2005. He was also erroneously paid salary at the annual rate of \$84,379.00 from June 26, 2005, through July 9, 2005, in the amount of \$232.00. Thus, he was overpaid \$1,157.83 (\$925.83 + \$232.00).

During the period July 10, 2005, through August 20, 2005, the employee was correctly paid at the annual salary of \$78,322.00. However, during the pay period ending September 3, 2005, the employee erroneously received a retroactive payment in the amount of \$911.33, compensating him at the annual salary rate of \$84,379.00 from July 10, 2005, through September 3, 2005. He continued to erroneously receive salary at the annual rate of \$84,379.00 through October 29, 2005, causing him to be overpaid \$1,117.96. Thus, the employee was overpaid \$2,029.29 (\$911.33 + \$1,117.96). In addition, the employee's retention allowance was miscalculated from June 26, 2005, through October 29, 2005, causing an overpayment of \$90.97. Therefore, the employee was overpaid \$3,278.09 (\$1,157.83 + \$2,029.29 + \$90.97).

Our Office waived the employee's debt for the erroneous payment of \$90.97. The issue in this reconsideration is whether DOHA acted reasonably in denying waiver of the employee's debt in the amount of \$3,187.12. In his request

for reconsideration, the employee states that he had no reason to question the changes in his pay because he did not receive hard copies of his SF-50s and there were changes in the engineering pay scale at the time of the overpayment. Finally, he contends that waiver is appropriate because the overpayment was a result of an error on the part of the government.

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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. 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. A waiver is generally not appropriate when a recipient of a significant unexplained increase in salary does not attempt to obtain a reasonable explanation from an appropriate official. *See* Instruction ¶ E4.1.5. 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. An employee is considered at least partially at fault for the erroneous payment if he fails to question an unexplained increase in salary that would cause a reasonable person to make an inquiry. *See* DOHA Claims Case No. 02052002 (August 27, 2002), DOHA Claims Case No. 99010416 (February 18, 1999)⁽⁴⁾ and Comptroller General decision B-226465, ar. 23, 1988.

In this case, the employee received the correct annual salary during the period April 3, 2005, through June 25, 2005. Therefore, when he received a retroactive payment in the amount of \$925.83 during the pay period ending July 9, 2005, he should have questioned this unexplained increase in salary. Even though the employee states that he did not receive copies of his SF-50s, he does indicate that he requested electronic copies of his leave and earnings statements (LES) during the period of overpayment. On his LES for pay period ending July 9, 2005, his hourly rate was \$38.70, a \$2.90 increase over his hourly rate for pay period ending June 25, 2005. Therefore, the employee should have questioned why his hourly rate increased and why he received a retroactive payment in the amount of \$925.83 as of pay period ending July 9, 2005, especially since he received no documentation supporting these increases. Even though the employee now states that he thought the increases were result of changes in the engineering pay scale, he has submitted no evidence supporting this belief. Further, the employee should have verified this belief with the appropriate officials at the time of overpayment since he was not receiving SF-50s. If the employee had brought the matter to the attention of the appropriate officials, the error could have been corrected, and its correction presumably would have prevented the continuation of the overpayment. Since the employee failed to do so, waiver is not appropriate.

Conclusion

The employee's request for relief is denied, and we affirm the November 15, 2006, decision to deny waiver of \$3,187.12. In accordance with DoD Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

_____/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. Base pay \$72,291.00 + locality pay \$2,416.00 + retention allowance \$7,229.00 = \$81,936.00.
2. Base pay \$72,291.00 + locality pay \$2,416.00 + retention allowance \$3,615.00 = \$78,322.00.
3. Base pay \$72,291.00 + locality pay \$8,473.00 + retention allowance \$3,615.00 = \$84,379.00.
4. This decision involved a waiver request from a military member under 10 U.S.C. § 2774. The same waiver standards also apply to civilian employees seeking waiver under 5 U.S.C.

§ 5584.