

DATE: February 26, 2007

In Re:

[Redacted]

Claimant

)

Claims Case No. 07021501

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

When an employee is aware or should be aware that she is receiving payments 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

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 07012214, dated January 30, 2007, which allowed in part the employee's application for waiver of erroneous payments of salary.

Background

On December 17, 2002, the Defense Advance Research Projects Agency (DARPA), Arlington, Virginia, approved a retention allowance for the employee. The employee subsequently received the allowance. On October 4, 2004, the employee accepted a new position with the Missile Defense Agency (MDA) in Albuquerque, New Mexico. As a result, she was no longer entitled to receive the retention allowance. However, due to an administrative error, she erroneously continued to receive this allowance from October 4, 2004, through January 7, 2006, causing an overpayment of \$16,938.40.

In the DOHA appeal decision the adjudicator found that the employee accepted overpayments of retention allowance up until October 15, 2005, in good faith. Therefore, the adjudicator waived this portion of the overpayment, (\$13,842.40) and it is not at issue in this request for reconsideration. However, the adjudicator denied waiver of the overpayment in the amount of \$3,096.00 which arose during the period October 16, 2005, through January 7, 2006, because the employee should have questioned her entitlement to receive the retention allowance one year after accepting her new position with MDA. In her request for reconsideration, the employee states that she was advised at the time of her interview with MDA that her position was a "hard-to-fill position," and therefore, she had no reason to question the continuation of the retention allowance after receiving it for one year. She states that giving bonuses is a management prerogative and not normally discussed with the employee in advance. Since her performance appraisals indicated that she was performing at reasonably high levels at MDA, she states that the continuation of her retention allowance seemed in concert with her performance ratings.

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 interests 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. An employee is not entitled to waiver as a matter of right merely because she was overpaid due to administrative error. If an employee knows, or should know, that she is receiving payments in excess of her entitlements, she does not acquire title to the excess amounts and should be prepared to return them.

There is a reasonable basis for DOHA's finding that the employee knew or should have known that she was overpaid during the period October 16, 2005, through January 7, 2006. The record reflects that the employee was advised (prior to accepting her new position at MDA) that the Director of Human Resources at DARPA had approved the continuation of her retention allowance for an additional year. Therefore, when the employee continued to receive the retention bonus after this one year period, she should have questioned the matter. Although the employee's position at MDA may have been a hard-to-fill position and she may have received high performance ratings, she has presented no documentary evidence to support her belief that she was entitled to continue to receive her retention allowance. Under these circumstances, she acquired no title to the excess amount and should have retained the overpayments for eventual repayment to the government. Therefore, waiver is not appropriate. *See* DOHA Claims Case No. 04020909 (February 12, 2004).

Conclusion

The employee's request for relief is denied, and we affirm the January 30, 2007, decision to deny waiver in the amount of \$3,096.00. In accordance with Department of Defense Instruction 1340.23, ¶ 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