

KEYWORDS: waiver of indebtedness

DIGEST: A waiver usually is not appropriate when a recipient of an overpayment knows, or reasonably should know, that a payment is erroneous.

CASENO: 07041601

DATE: 5/15/2007

DATE: May 15, 2007

_____))
In Re:))
 [REDACTED]) Claims Case No. 07041601
))
Claimant))
_____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver usually is not appropriate when a recipient of an overpayment knows, or reasonably should know, that a payment is erroneous.

DECISION

An employee of the Defense Contract Management Agency requests reconsideration of the March 6, 2007, appeal decision of the Defense Office of Hearing and Appeals (DOHA) in DOHA Claim No. 07022206. In that decision our Office waived collection of \$11,852.50 of the \$13,220.90 debt owed by the employee as a result of an erroneous overpayment in salary. The employee's reconsideration request appears to be directed to the remaining \$1,368.40 that was not waived.

Background

The employee, a quality assurance specialist, GS-11 step 10, was allowed to perform and receive overtime pay in a foreign exempt area while on temporary duty deployment. His Fair Labor Standards Act (FLSA) status should have been changed from a non-exempt status to an exempt status, and his hourly overtime rate should have been capped at the rate of a GS 10 step 1. However, due to administrative error, the employee's FLSA status remained non-exempt. Consequently, when he worked overtime during the period January 9, 2005, through June 11, 2005, he erroneously received time and a half for his basic salary, instead of his overtime rate being capped at the GS 10 step 1 rate, causing an overpayment of \$13,220.90. Our adjudicator allowed waiver for the overpayment that had accrued between January 9, 2005, and May 28, 2005, but denied waiver relief for the pay period ending June 11, 2005, because the employee had been advised of the problem in sufficient time (on the pay day for the pay period ending June 11, 2005) that he should have known that a portion of the pay he was receiving for that pay period was erroneous. The employee was advised that he could request reconsideration but that his request had to be received by our Office within 30 days of the March 6, 2007, appeal decision. Our Office received the employee's request on April 16, 2007.

In his reconsideration request, the employee argues that our Office erred in sending the appeal decision to the wrong address because our Office sent it to his former address in South Carolina rather than the proper address in Vermont. He explained that the letter was forwarded to him at the Vermont address and then re-forwarded to him in another state where he is in the process of relocating. He finally received the appeal decision around April 3, 2007, and the fax number we provided was incorrect. We construe the substance of his request to be that the Defense Finance and Accounting Service (DFAS) had already taken the \$1,368.40 debt from his pay in 2005.

Discussion

We agree with the employee that there is good cause for his untimely request for reconsideration. An applicant for waiver must provide a current, complete address in block 7 of the DD Form 2789 (*Waiver/Remission of Indebtedness Application*), and is under an obligation to immediately advise DFAS (and our Office if the matter is appealed to us) of any change in the address. In this case, however, the waiver application was made on the employee's behalf by his agency, and the incorrect address was repeated in DFAS's 2007 administrative report. There is no indication that the member was aware of the application prior to our appeal decision. Additionally, we agree that the fax number our adjudicator provided in the appeal decision was incorrect by one number due to a typographical error.

However, even though we accept the employee's request for reconsideration, there is no basis for overruling or amending the appeal decision. Our adjudicator denied waiver of the final \$1,368.40 of the employee's debt because the employee was informed on June 17, 2005, that a portion of the pay he received on that payday was an erroneous overpayment. At that point, the

employee was aware that he was overpaid during the pay period in issue, and waiver of the overpayment for that pay period therefore was inappropriate. The adjudicator's decision is in accord with the Standards for Waiver Determinations, particularly paragraph E4.1.4 of Department of Defense Instruction 1340.23 (February 14, 2006). If the employee has any question about the disposition of that collection, he must address that matter with DFAS.

Conclusion

The employee's request for relief is denied, and we affirm the March 6, 2007, appeal decision. In accordance with the above referenced 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