

DATE: February 27, 2007

---

In Re:

[REDACTED]

Claimant

---

)

Claims Case No. 07021603

**CLAIMS APPEALS BOARD**  
**RECONSIDERATION DECISION**

**DIGEST**

A debt which arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the LQA payments were proper when made.

**DECISION**

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 07010805, dated January 23, 2007. In that decision, DOHA waived \$467.67 of the government's claim against the employee and determined that \$5,806.21 could not be considered for waiver.

**Background**

The amount already waived is not in issue. The partial denial involved the final calculation of the employee's allowable housing expenses. While working in Germany, the employee was entitled to receive a living quarters allowance (LQA). The employee was paid \$10,507.42 during the period February 25, 2001, through June 28, 2003. After a final reconciliation of her allowable housing expenses was completed, it was determined that the LQA she had received exceeded her allowable expenses by \$5,806.21.

Our Office determined that the overpayment resulting from the reconciliation of the employee's LQA did not represent an erroneous payment, and could not be considered for waiver under the provisions of 5 U.S.C. § 5584. In her request for reconsideration, the employee states that the fact that she acted in good faith with no intent to defraud the government was not given due weight in the appeal decision. She further states that undue hardship also was not considered.

**Discussion**

As discussed in the appeal decision, our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under the provisions of 5 U.S.C.

§ 5584. Under Section 5584 we may waive a claim for an erroneous overpayment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. In order to be considered for waiver under 5 U.S.C. § 5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.

In this case, the employee was not erroneously overpaid. The debt at issue involves LQA, payment of which is governed

by 5 U.S.C. §§ 5922-5923 and by implementing regulations issued by the Department of State. <sup>(1)</sup> Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates that periodically a reconciliation is performed, after which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowable expenses. Thus, we have held that 5 U.S.C. § 5584 generally does not apply to excess advances of LQA unless LQA payments were made erroneously. *See* DOHA Claims Case No. 02011609 (February 15, 2002) and DOHA 99050610 (May 27, 1999). By definition, a payment must be erroneous when made if it is to be considered for waiver under

5 U.S.C. § 5584. In this case, the debt cannot be considered for waiver.

Even if an erroneous payment had been involved here, waiver is not available to relieve a financial hardship. *See* DOHA Claims Case No. 02072501 (August 7, 2002).

### Conclusion

The employee's request for relief is denied, and we affirm the January 23, 2007, decision. 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

1. *See* the Department of State's Standardized Regulations for civilian employees living overseas. A current version is posted at [www.state.gov/m/a/als/c1843.htm](http://www.state.gov/m/a/als/c1843.htm).