

DATE: March 29, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 07032202

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

When an employee is aware or should be aware that he is receiving payments in excess of his entitlements, he 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. 07020803, dated February 23, 2007. In that decision, DOHA denied waiver of erroneous payments of salary in the amount of \$14,625.36.

Background

On October 5, 2003, the employee's pay records were transferred from the Defense Finance and Accounting Service - Pensacola (DFAS-Pensacola) to another payroll office within the Department of Defense. However, the employee erroneously continued to receive salary payments from DFAS-Pensacola from October 5, 2003, through October 1, 2005, causing an overpayment in the amount of \$14,625.36.

The employee requested waiver of the claim against him, and the Defense Finance and Accounting Service (DFAS) subsequently denied waiver. He appealed DFAS's denial to our Office. In the appeal decision, the DOHA adjudicator upheld DFAS's denial. The adjudicator found that although the employee stated that he did not notice the overpayments because he was receiving Combat Service Compensation (CRSC) and financial aid, he did not provide any documentation supporting his belief that he was entitled to receive payment in the amount and frequency he received during the period of overpayment. In addition, he also received payments from his new payroll office during the period of overpayment. When he received the overpayments during this period without any documentation explaining them, he should have at least questioned the validity of the payments.

In his request for reconsideration, the employee states that he did not receive leave and earnings statements (LES) or any documentation during the time of the overpayment. He states that he has no knowledge that the claimed amount of the debt was actually what he received. He states that the only record he has reflecting the overpayment is his 2005 W-2, and his W-2 reflects the amount of overpayment as \$4,860.48. Therefore, he requests the debt be reduced to reflect this amount.

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. 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 payment and to set aside the funds in the event that repayment should be necessary. *See* Instruction ¶ E4.1.5.

In the present case, the employee was receiving payments from his new payroll office during the period October 5, 2003, through October 1, 2005. During the same period he was also receiving payments from DFAS-Pensacola. In fact, in the first five pay periods after his records were transferred, he received \$1,171.20 consecutively per pay period. The employee has not submitted any evidence reflecting that he expected payments in the specific dollar amount received and time he received them.

The employee states that he has no way of knowing that the claimed amount of the debt was actually what he received because he did not receive LES. However, when the employee filed his waiver application, he informed DFAS that he did receive bank statements showing deposits, but he did not receive any documentation explaining why they were deposited into his account. The fact that an employee has pay sent directly to his bank account does not relieve him of the responsibility of verifying his statements and questioning any discrepancies. *See* DOHA Claims Case No. 02030503 (March 14, 2002) and DOHA Claims Case No. 99111916 (December 8, 1999), *aff'd* by Deputy General Counsel (Fiscal) on December 12, 2000. Upon receipt of the unexplained deposits, the employee had a duty to question his entitlement to them and set them aside in the event repayment was necessary. When an employee is aware or should be aware that he is receiving an erroneous or questionable payment, he does not acquire title to the excess amount. *See* DOHA Claims Case No. 99111916, *supra*.

As for reducing the debt to \$4,860.48, the amount reflected on his 2005 W-2, we have consistently held that the employee is obligated to pay the gross amount of the overpayment.

See DOHA Claims Case No. 06022701 (March 21, 2006). DFAS has advised us that the \$14,625.36 represents the gross amount of the overpayment which includes pay, all taxes, benefits and other deductions. The employee may contact DFAS to request copies of any records they hold that pertain to his debt.

Conclusion

The member's request for relief is denied, and we affirm the February 23, 2007, decision to deny waiver in the amount of \$14,625.36. 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