

DATE: January 8, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 06122101

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. 06112730, dated December 7, 2006, which allowed in part the employee's application for waiver of erroneous payments of salary in the amount of \$1,056.60 and denied waiver in the amount of \$573.84. The employee asks us to reconsider waiver of the additional \$573.84. [\(1\)](#)

Background

The employee elected Blue Cross Blue Shield, Federal Employee's Health Benefits (FEHB) plan coverage, and proper deductions were subsequently withheld from his salary from December 5, 1989, until June 15, 2003. On June 16, 2003, the employee was placed on the Office of Workers' Compensation Program (OWCP) payroll, and his health insurance premiums were paid by the OWCP. When the employee returned to duty on September 22, 2003, health insurance premiums were properly deducted from his salary through November 15, 2003. Due to an administrative error, health insurance premiums were not withheld from his salary from November 16, 2003, through May 1, 2004, causing an overpayment in the amount of \$573.84.

Our Office denied waiver of the overpayment in the amount of \$573.84 because the employee was aware that his health insurance premiums were not being deducted from his salary. In his request for reconsideration, the employee states that the \$573.84 should be waived because if financial personnel had been doing their job and paid more attention to his situation, the error would have been corrected. He indicates that having to pay this debt back has been a financial hardship for him.

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) ¶ E.4.1.2. 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 he was overpaid due to administrative error. *See* DOHA Claims Case No. 02050613 (May 23, 2002). If an employee knows, or should know, that he is receiving payments in excess of

his entitlement, he does not acquire title to the excess amounts and should be prepared to return them. *See* DOHA Claims Case No.98120401 (March 4, 1999).

In the present case, the employee received leave and earnings statements (LES) that indicated that his FEHB premiums were not being deducted from his salary. In his initial waiver request he states that during his recuperation he made every effort to ensure that he provided his civilian resource office with all the necessary documentation. He states that he was aware that deduction of his FEHB premiums stopped being deducted from his pay as reflected on his LES during the period November 16, 2003, through May 1, 2004. In his request for reconsideration, the employee states that he continued to work with finance personnel to resolve his pay issues. However, he expresses frustration over finance personnel's inability to resolve his pay issues before his eventual retirement. Although we appreciate the fact that the employee worked so diligently to help resolve the problems with his salary before retiring, waiver is still not appropriate in this case. When an employee is aware of receiving overpayments he cannot reasonably expect to retain them. Under these circumstances, he does not acquire title to the excess payments and has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 02050613, *supra*, DOHA Claims Case No. 02022603 (April 17, 2002) and DOHA Claims Case No. 01102309 (November 14, 2001).

Although the employee may be experiencing financial hardship, financial hardship does not provide a basis for waiver. *See* DOHA Claims Case 02050613, *supra*.

Conclusion

The member's request for relief is denied, and we affirm the December 7, 2006, decision to deny waiver in the amount of \$573.84. 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. The erroneous payments totaling \$1,056.60 resulted from unrelated salary miscalculations which are not at issue here.