KEYWORDS: waiver of indebtedness

DIGEST: A physician who ceased providing services after completing 14 months of his two-year commitment under a Physicians Comparability Allowance Agreement was required to refund the comparability allowance payments he earned during the 26 weeks prior to his departure from the program. Under 5 U.S.C. § 5584, the resulting debt may not be considered for waiver since the payments were proper when made, even though the physician ceased providing services due to medical necessity.

CASENO: 07050113

DATE: 5/17/2007

DATE: May 17, 2007

In Re: [REDACTED]	Claims Case No.07050113
Claimant	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

A physician who ceased providing services after completing 14 months of his two-year commitment under a Physicians Comparability Allowance Agreement was required to refund the comparability allowance payments he earned during the 26 weeks prior to his departure from the program. Under 5 U.S.C. § 5584, the resulting debt may not be considered for waiver since the payments were proper when made, even though the physician ceased providing services due to medical necessity.

DECISION

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 07031305, dated April 16, 2007. In that decision, DOHA determined that $10,408.67 could not be considered for waiver.

Background

In July 2004 the employee executed a Physicians Comparability Allowance Service Agreement by which he agreed to serve as a Medical Officer (Family Practice) at a U.S. Army Health Clinic from July 28, 2004, through July 27, 2006. In the agreement, the employee agreed to the following:

> "If my employment as a physician is terminated during the period of the agreement at my request, or as a result of my misconduct, I will be required to refund the total amount received under the agreement if I have completed less than one year of the agreement, or if I have completed one year or more of the agreement, I will be required to refund the amount of allowance earned during the 26 weeks prior to termination."

On September 30, 2005, the employee terminated his service prior to the end of the agreement. Because the employee terminated his employment with the Army after completing 14 months of the two-year agreement, the Defense Finance and Accounting Service (DFAS) required him to refund the amount of allowance he earned during the 26 weeks prior to termination of his employment. DFAS calculated the amount to be collected from the employee as $10,408.67.[1]

In the appeal decision, our Office determined that the debt could not be considered for waiver. In his request for reconsideration, the employee states he left his employment out of medical necessity. He states that he received payment only for the professional services he rendered and that once he terminated his service, the payments stopped. He also states that he paid income taxes on the payments he received. Therefore, he believes collection of the claim would be against equity and good conscience.

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[1]According to the record, DFAS is holding the employee liable for the amount he earned during the period March 20, 2005, through October 1, 2005. We note that this period is longer than 26 weeks prior to the employee's termination. It is unclear why DFAS is holding the member liable for more than the amount of allowance he earned during the 26 weeks prior to termination.

Discussion

Under the applicable statute, 5 U.S.C. § 5948, physicians comparability allowances (PCA) are payable to certain qualified Government physicians who enter into written service agreements with the head of an agency to complete a specified period of service in such agency. The amounts of PCA shall be determined by the agency head subject to such regulations, criteria, and conditions as the President or his designee may prescribe. *See* § 5948(c). Any agreement under the statute shall specify, subject to regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination. *See* § 5948(f). Therefore, a physician's entitlement to such payments is subject to these statutory provisions, applicable regulations, and the provisions of the written agreement. *See generally* paragraph 030501 of Volume 8 of DoD 7000.14R, DoD Financial Management Regulation, Civilian Pay Policy and Procedures; and Physicians' Comparability Allowances, 5 C.F.R. § 595.

Our authority in this case is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we have the authority to waive claims of erroneous overpayments of pay and 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. 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 employee executed a written agreement pursuant to 5 U.S.C. § 5948 to serve as a Medical Officer from July 28, 2004, through July 27, 2006. In return, he became entitled to receive an annual PCA in the amount of $20,000. According to the record, this was paid to him in bi-weekly payments of $766.40. On September 30, 2005, he left after completing 14 months of his two-year commitment. Under the statute and written agreement, DFAS determined that he was legally required to repay the amount of allowance earned during the 26 weeks prior to the termination of his contract for medical reasons.

Since the PCA payments were properly paid to the employee in accordance with the agreement he executed with the Army, the payments may not now be considered erroneous because he became obligated to repay them due to the termination of his contract for medical reasons. *See* 61 Comp. Gen. 292 (1982); and B-200113, Feb. 13, 1981. The fact that he left due to a medical condition does not change the nature of the payments. *See* DOHA Claims Case No. 03100601 (October 28, 2003); and B-200113, *supra*.

As discussed above, waiver is not available as a remedy in this situation. We note that under 5 U.S.C. § 5948(e), the head of the agency involved has discretion not to collect the payments in question from a physician if he determines that failure to complete the agreed period of employment was necessitated by circumstances beyond the control of the physician.

Conclusion

The employee's request for relief is denied, and we affirm the April 16, 2007, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom
Member, Claims Appeals Board