

KEYWORDS: waiver of indebtedness

DIGEST: For a debt to be waived, there must be no indication that the erroneous payment was solely or partially the fault of the claimant.

CASENO: 07050402

DATE: 9/9/2006

DATE: May 9, 2006

In Re:)
 [REDACTED]) Claims Case No. 07050402
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

For a debt to be waived, there must be no indication that the erroneous payment was solely or partially the fault of the claimant.

DECISION

An employee of the United States Army requests that we reconsider the April 23, 2007,¹ appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07032808. In that decision, DOHA affirmed the decision of the Defense Finance and Accounting Service (DFAS) to deny waiver of collection of an erroneous overpayment to the employee in the amount of \$4,381.56.

Background

¹The appeal decision is actually dated "April 23, 2006." It is obvious that the reference to 2006 is a typographical error.

The record shows that on May 6, 2004, the employee signed a service agreement which entitled her to receive a retention allowance through May 1, 2005. On April 13, 2005, a continuation of the retention allowance was approved, and on April 22, 2005, the employee signed a service agreement which entitled her to continue to receive retention allowance for an additional year. In May 2006, the employee's retention allowance was terminated effective April 29, 2006; however, due to administrative error, the employee erroneously continued to receive the retention allowance through September 16, 2006, causing the overpayment.

The employee acknowledges receipt of a *Notification of Personnel Action*, Standard Form 50 (SF 50), effective April 16, 2006, which "reactivates retention incentive previously cancelled due to system issue," and she understood this to mean that the incentive was reactivated. The employee states that she never thought about having to sign another agreement. She contends that she was unaware of any problem until her discussion with a personnel official on August 24, 2006, and at that point, she expected the retention incentive to stop with the next pay period. When this did not occur, she sought help to stop the payments. The retention payments were paid through September 16, 2006. The employee seeks waiver of the entire debt, but at a minimum believes that collection of the debt should be waived at least until she became aware of the problem on August 24, 2006.

Discussion

The employee's argument that she was not aware of a problem until August 24, 2006, is not persuasive. Both DFAS and our adjudicator found that employee was aware that the retention incentive was reviewed on an annual basis and that she had to sign an agreement to receive the incentive. In the two prior years, she signed an agreement before receiving payment effective May 1 each year. Accordingly, they reasonably concluded that if the employee thought she was entitled to the incentive after April 30, 2006, she should have questioned the need to sign a new agreement. Additionally, our adjudicator noted in the appeal decision that the SF 50 referenced by the employee was issued on May 4, 2006, and although the retention incentive was reactivated, it indicated only that the allowance would be paid from April 16, 2006, until April 30, 2006. The employee is partially at fault for not questioning her entitlement to retention incentive payments after April 30, 2006, and therefore, waiver is precluded. See generally Department of Defense Instruction 1340.23 (February 14, 2006), Enclosure 4 (Standards for Waiver Determinations), and specifically see ¶ E4.1.2.

Conclusion

The employee's request for relief is denied, and we affirm the April 23, 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

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