

KEYWORDS: waiver of indebtedness

DIGEST: Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous.

CASENO: 07051606

DATE: 5/18/2007

DATE: May 18, 2007

In Re:	)	
[REDACTED]	)	Claims Case No. 07051606
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous.

**DECISION**

A former employee of the Department of Defense Educational Activity (DoDEA) requests reconsideration of the April 26, 2007, appeal decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 07032301. In the appeal decision, DOHA affirmed DoDEA's initial determination denying the employee's request that the government waive collection of a debt owed by the employee.

## Background

The record shows that the employee was in a leave-without pay (LWOP) status from February 17, 2003, through February 21, 2003. On February 22, 2003, the employee resigned from DoDEA to transfer to another agency. As a result, during the pay period ending (PPE) February 22, 2003, the employee was entitled to receive salary in the gross amount of \$1,448 (40 hours X \$28.96 per hour, plus seven days post allowance at \$289.60). However, due to administrative error, the employee was paid \$2,896 (80 hours X \$28.96 per hour, plus 14 days post allowance at \$ 579.20). Therefore, the employee was overpaid \$1,448. After applying administrative adjustments, the employee's debt is \$960.17, which is the amount considered for waiver.

In her decision, our adjudicator considered the employee's master pay history, provided by DoDEA, which contained the information found on his leave and earnings statements (LEs). This record indicated that the net pay that was directly deposited into the employee's bank account for the PPE February 22, 2003 (\$1,995.28), was nearly the same as the amount deposited in the previous pay period (\$1,995.30), even though the employee was on LWOP for part of the pay period. The adjudicator also found that the employee had stated that he was in LWOP status during the last period pay period of his appointment at DoDEA<sup>1</sup> and that he has not disputed receipt of the deposit.<sup>2</sup> Accordingly, the adjudicator concluded that the employee should have questioned his entitlement to receive salary in almost the exact amount that he would have received if he had worked a full 80 hours in the final pay period. When an employee knows or should know that he is receiving salary to which he is not entitled, he has a duty to retain such amounts for subsequent refund to the government and make a prompt inquiry to appropriate officials.

We construe employee's reconsideration request as a dispute of his LWOP status in the final pay period, and therefore, a dispute of the debt itself. He states that he would be willing to repay the entire debt if DoDEA provides him proof, through official copies of his time card, that he actually was in LWOP status during the final week of employment with DoDEA. The employee did not offer contrary evidence, *e.g.*, statements from former fellow employees at DoDEA attesting to his presence for duty for 80 hours in the final pay period, or statements from former supervisors indicating a status consistent with being on duty during the 80 hours in question.

## Discussion

The employee filed an application for debt waiver, but waiver consideration at the appellate level in this Office does not include an adjudication of the validity of the debt.

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<sup>1</sup>See employee's Waiver/Remission of Indebtedness Application (DD Form 2789), paragraph 10, dated September 20, 2006.

<sup>2</sup>Letter from employee to DFAS dated May 1, 2006.

Moreover, our Office has no authority to adjudicate the validity of such debts that arise from disputes involving civilian employee compensation and leave. The validity of such debts must be resolved by the agency concerned, here DoDEA, and ultimately the Office of Personnel Management (OPM). *See* 31 U.S.C. § 3702 (a)(2).

To address the employee's request to us, our Office accepts the findings of fact in the agency's administrative report in the absence of clear and convincing contrary evidence. *See* DOHA Claims Case No. 03121101R (March 31, 2004). In this case, our adjudicator had sufficient record evidence, based on the information provided by DoDEA and through the employee's own admissions, to conclude that he was in LWOP status during part of his final pay period with DoDEA. Nevertheless, it is undisputed that he was paid for 80 hours of work in that final pay period. For the reasons set forth above, our adjudicator reasonably concluded that waiver relief for the resulting debt was not available in these circumstances. *See* 32 C.F.R. Part 284, Appendix B, paragraph A4.

The employee may continue to dispute his debt with DoDEA and OPM, but, in any event, there is no basis for waiver relief.

### **Conclusion**

The employee's request for waiver relief is denied, and we affirm the April 26, 2007, appeal decision. In accordance with 32 C.F.R. Part 284, Appendix F, paragraph O, 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