

Europe, was entitled to receive living quarters allowance (LQA) and post allowance (PA) for her permanent housing quarters expenses. On November 16, 2006, the employee vacated her permanent quarters and moved into a guest house as temporary quarters. At that time, she became entitled to temporary quarters subsistence allowance (TQSA), but was no longer entitled to LQA or PA. The employee erroneously continued to receive LQA and PA through December 9, 2006, causing the overpayment of \$2,268.22. On December 6, 2006, the employee applied for TQSA for the period November 16, 2006 through December 7, 2006.

In the appeal decision, DOHA's adjudicator specifically considered the employee's argument that she had to continue to pay rent on the permanent quarters through November 30, 2006, but the adjudicator found no documentary evidence that she was entitled to receive LQA and PA payments through December 9, 2006. The adjudicator concluded that the employee should have known that her entitlements would change when she vacated her permanent quarters. In her reconsideration, the employee again notes her responsibility for the permanent quarters through November 30, 2006, and suggests that she thought that she had to vacate her permanent quarters due to the early pack-up (for personal property) date because of the Thanksgiving holiday. She argues that she was never properly advised of her respective entitlements to LQA/PA and TQSA. She also requested that her claim be reconsidered to include LQA and PA through November 30, 2006, and then reimbursement for guest house expenses for December 1-9, 2006.

Discussion

Under 5 U.S.C. § 5584, we have authority to waive a claim for erroneous overpayment 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 evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). In this case there is an adequate basis to support the adjudicator's conclusion that the employee should have known that vacating her permanent quarters could affect her entitlement to LQA/PA. *Compare* the decision of the Comptroller General in B-201253, May 26, 1981. It was the employee's responsibility to obtain official clarification of her entitlements before she acted. In any event, a waiver application is not the appropriate place to adjudicate these particular entitlements, considering the agency discretion involved (*e.g.*, the determination of when it was necessary to vacate the permanent housing).¹ The employee now seeks to revise her entitlement claim, but our Office has no authority to consider the employee's legal claim to any of the entitlements discussed herein because they involve civilian pay,

¹The head of the agency or his designee may determine that up to five days are required for payment of both LQA and TQSA on final departure because the employee must necessarily vacate permanent residence quarters in order to comply with stringent lease requirements for cleaning and repair. TQSA may commence on the latest of the following: the necessary vacating of government owned or leased quarters or termination of the LQA grant, or the date expenditures for TQSA are first incurred following the necessary vacating of permanent quarters. *See* DSSR § 124.1.

allowances or travel issues. These claims should be addressed to DFAS.

Conclusion

The employee's request for relief is denied, and we affirm the July 27, 2007, appeal decision. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense concerning a waiver of indebtedness.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board