

KEYWORDS: waiver of indebtedness; LQA reconciliation

DIGEST: A debt which arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the LQA payments were proper when made.

CASENO: 07060603

DATE: 6/26/2007

DATE: June 26, 2007

	)	
In Re:	)	
[REDACTED]	)	
	)	Claims Case No. 07060603
	)	
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A debt which arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the LQA payments were proper when made.

**DECISION**

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 07050401, dated May 7, 2007. In that decision, DOHA determined that the member's request for waiver of \$4,944.40 could not be considered under 5 U.S.C. § 5584.

## **Background**

While working overseas, the employee was entitled to receive a living quarters allowance (LQA). On October 5, 2002, the employee was paid an advance payment of LQA in the amount of \$44,454.00 for the period August 15, 2002, through August 15, 2003. Upon reconciliation of his allowable housing expenses, the Defense Finance and Accounting Service (DFAS) determined that his allowable expenses during the period August 15, 2002, through August 15, 2003, were \$39,509.60. Since the employee received an advance payment of LQA in the amount of \$44,454.00, he was overpaid \$4,944.40.

Our Office determined that the overpayment resulting from the reconciliation of the employee's LQA did not represent an erroneous payment, and could not be considered for waiver under the provisions of 5 U.S.C. § 5584. In his reconsideration request, the employee states that he believes the DFAS's computation of his LQA debt is inaccurate. He states that he never received any debt computation data from DFAS to support his alleged debt of \$4,944.40, including the data used to compute his LQA entitlement in the amount of \$39,509.60. He believes that his debt is eligible for waiver consideration because any excess above the LQA entitlement should never have been approved by DFAS. Thus, any excess should be an erroneous payment under 5 U.S.C. § 5584.

## **Discussion**

Under 5 U.S.C. § 5584 we have the authority to waive a claim for an erroneous overpayment of pay or 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. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. In order to be considered for waiver under 5 U.S.C. § 5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.

In this case, the employee's debt resulted from the overpayment of LQA. Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates that periodically a reconciliation is performed, after which the employee is required to repay the amount by which the amount he received exceeds his allowable expenses. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowable expenses. Thus, we have held that 5 U.S.C. § 5584 generally does not apply to excess advances of LQA unless LQA payments were made erroneously. *See* DOHA Claims Case No. 02011609 (February 15, 2002); and DOHA Claims Case No. 99050610 (May 27, 1999). 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 debt cannot be considered for waiver because the employee was not erroneously overpaid.

The employee questions the validity of the debt which gave rise to the waiver request. The validity of the debt is an issue separate from the waiver process. Our Office must accept the

calculation of the employee's debt by DFAS in the absence of clear and convincing evidence to the contrary. *See* DOHA Claims Case No. 05040601 (April 26, 2005); and DOHA Claims Case No. 04022402 (March 10, 2004). If he disputes their calculations or requires information regarding their calculations, he should contact the DFAS civilian payroll office that sent him the debt letter.

### **Conclusion**

The employee's request for relief is denied, and we affirm the May 7, 2007, decision. 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

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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