

KEYWORDS: waiver of indebtedness-ineligible debts, LQA

DIGEST: A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

CASENO: 07082101

DATE: 8/28/2007

DATE: August 28, 2007

)	
In Re:)	
[REDACTED])	Claims Case No.07082101
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt that arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

DECISION

An employee of the Department of the Army requests reconsideration of the July 23, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07050803. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) that an overpayment incurred by the employee was not eligible for waiver consideration under 5 U.S.C. § 5584.

Background

The record shows that the employee was stationed in Germany and was entitled to receive

living quarters allowance (LQA). The employee was paid LQA in the amount of \$127,851.85 during the period August 1, 2000, through February 4, 2006. However, during the reconciliation of the employee's LQA, it was determined that the authorized amount of payments during that period was \$118,993.79. Therefore, he was overpaid \$ 8,858.06.

As DOHA's adjudicator explained, normally, an overpayment in advances of LQA are not eligible for waiver consideration because the bi-weekly estimated advances, which are subject to reconciliation, are not erroneous when made. LQA is based on an employee's estimate of annual quarters costs subject to reconciliation at the end of the LQA payment period. At that time, the employee provides documentation of his expenses, and then the appropriate official determines the total creditable amount, the annual conversion rate, and the State Department LQA maximum rate. Based on these computations, the employee is authorized the lesser of the LQA maximum rate or the total costs.

In this case, the employee became involved in a dispute with his agency over the proper amount of his LQA. When the dispute was resolved in the employee's favor, he received two lump sum payments in 2005: \$21,906.19 on the pay period ending June 11, 2005; and \$10,875.48 on the pay period ending October 29, 2005.

The employee contends that his waiver request does not involve advance payments, but LQA payments which were paid retroactively and without explanation (parts of which were two years in arrears). He argues that since the retroactive payments were overpayments made through administrative error, they cannot be considered as advance payments and are eligible for waiver consideration under 5 U.S.C. § 5584. He argues that the DOHA adjudicator erred in concluding that although the 2005 lump sum payments were retroactive, they were still advance payments based on estimates of the employee's entitlement and were paid prior to a final reconciliation and audit of the employee's LQA expenses.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee 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. In this case, the record does not indicate, and the employee did not prove, that he was erroneously overpaid.

The debt before us involves the overpayment of LQA payments. Such payments are governed by 5 U.S.C. §§ 5922-5923 and by implementing regulations issued by the Department of State.¹ Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates

¹See particularly paragraph 113.4 of the Department of State's Standardized Regulations (DSSR) for civilian employees living overseas regarding recovery of unpaid balances of LQA upon transfer. A current version is found at the Department of State, Office of Allowances web site. The Department of Defense Per Diem, Travel and Transportation Allowance Committee web page for DoD Travel Regulations currently has a link to the Office of

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 allowances. See DOHA Claims Case No. 99050610 (May 27, 1999). The employee showed that there was a miscalculation of his LQA entitlement and that he was underpaid in that regard. But the employee assumes, without proof, that the lump sum payments that corrected the underpayment were erroneously miscalculated by the government. There is nothing on the record that shows that the government did erroneously miscalculate these payments, or for that matter, any other LQA payment, and the employee offered no evidence that it did so. In the absence of any evidence to the contrary, it was not unreasonable for our DOHA adjudicator and DFAS to view the factual situation here as one in which all LQA payments paid throughout the period August 1, 2000, through February 4, 2006, were reconciled at the close of the period in accordance with the statute and implementing regulations referenced above.²

Conclusion

The employee's request for relief is denied, and we affirm the July 23, 2007, appeal decision. In accordance with DoD Instructions 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: Christine M. Kopocis

Christine M. Kopocis
Member, Claims Appeals Board

Allowances web site at <https://secureapp2.hqda.pentagon.mil/perdiem/trvlregs.html>.

²As DFAS had previously advised the employee, under 5 U.S.C. § 5922(b), the head of the agency involved (the Secretary of the Army in this case) has authority to waive the excess amount after reconciliation under the regulations of the President (i.e., the State Department's Standardized Regulations).