



## **Background**

The record shows that on August 1, 2004, the employee resigned from her position with the federal government to return to college. At that time, she was entitled to receive salary in the gross amount of \$401.50, which she received for the pay period ending August 7, 2004. Due to an administrative error, she erroneously received salary payments subsequent to her resignation during the period August 8, 2004, through September 4, 2004, causing an overpayment in the gross amount of \$124.32.

In addition, the employee's pay account incorrectly reflected her date of resignation as June 25, 2004. Although her resignation date was corrected, she was erroneously issued a retroactive payment in March 2005 in the gross amount of \$1,882.64 (net amount of \$1,418.15), which represented basic salary and night differential pay for the period June 27, 2004, through August 7, 2004. In addition, the incorrect resignation date also caused an overpayment of \$81.52. Our Office waived the \$81.52, and it is not at issue in this reconsideration.

In her request for reconsideration, the employee states that she did not question her receipt of the payments totaling \$124.32 because she regarded them as back pay. She states that she was a seasonal employee, not a salaried employee. Her work hours varied from week to week, and her supervisors were responsible for documenting and submitting her hours to the payroll office. If there was any back pay due her after her separation, she would receive that money in the pay periods following her resignation. She assumed that the small amounts she received totaling \$124.32 were for unpaid hours she worked from previous pay periods as well as night differential pay. She considers this evidence that the pay came as a result of the time-keepers' retroactive submission of her hours worked. She states that the circumstances surrounding her receipt of the retroactive payment in the net amount of \$1,418.15 are unusual and complex. The payment was sent in the form of a check to her father's address where she no longer resided because she was a student. She entrusted her father with handling her mail, which was mostly school-related. She states that she never saw the check, and if her father deposited the check for her, he would have deposited into an account that was meant for school expenses.

## **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. Waiver does not apply automatically to relieve the debts of all employees who, through no fault of their own, receive erroneous payments from the government. An employee is not entitled to waiver as a matter of right merely because she was overpaid due to administrative error. If an employee knows, or should know, that she is receiving payments in excess of her entitlement, she does not acquire title to the excess amounts and should be prepared to return them.

The Board finds that the employee accepted in good faith the \$124.32 she received in the two pay periods after her resignation due to her inexperience with pay matters, the variability of her hours, and the fact that her time-keepers often adjusted her pay and added night differential in a subsequent pay period.

However, we reach a different conclusion as to the retroactive payment of \$1,882.64 (net \$1,418.15) the employee received in 2005. The employee resigned from government service in August 2004 and should not have expected any further payment, especially considering she received this payment over seven months after her resignation. She did not acquire title to the money and had a duty to hold the money for eventual repayment. *See* DOHA Claims Case No. 98113023 (February 18, 1999), *modified by* DoD Deputy General Counsel (Fiscal) on February 9, 2001.<sup>1</sup> The fact that the overpayment in the net amount of \$1,418.15 was sent to her by check and deposited into her bank account by her father does not provide a basis for waiver, since she should have monitored her account. *See* DOHA Claims Case No. 010902001 (October 29, 2001); DOHA Claims Case No. 98112018 (January 11, 1999), *affirmed by* DoD Deputy General Counsel (Fiscal) on April 4, 2001; and DOHA Claims Case No. 97013102 (July 23, 1997). Therefore, collection of the \$1,882.64 overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States.

### **Conclusion**

We modify the April 30, 2007, appeal decision to waive an additional \$124.32 of the overpayment, as stated above. We affirm denial of the remaining \$1,882.64 in issue on this request for reconsideration. 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

---

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

---

<sup>1</sup>The modification was not relevant to the case before the Board.