

KEYWORDS: waiver of indebtedness

DIGEST: Waiver is not appropriate under 5 U.S.C. § 5584 when an employee knows or should be aware that she was receiving pay to which she was not entitled.

CASENO: 07100102

DATE: 10/11/2007

DATE: October 11, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No.07100102
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate under 5 U.S.C. § 5584 when an employee knows or should be aware that she was receiving pay to which she was not entitled.

DECISION

An employee of the Navy requests reconsideration of the September 20, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07091005. In that decision, DOHA waived \$4,142.40 of the government's \$4,565.60 claim against her for the overpayment of salary. DOHA denied waiver of the remaining \$423.20 of the debt. The employee seeks waiver of the entire indebtedness.

Background

On September 17, 2006, the employee was promoted to a GS-15, step 5. However, the Defense Finance and Accounting Service (DFAS) later determined that her salary should have been established as a GS-15, step 2. As a result, she was overpaid \$4,565.60 for the period September 17, 2006, through February 17, 2007. The record shows that on February 22, 2007, the employee was notified that her salary was incorrect. Our Office waived the portion of the overpayment the employee received for the period September 17, 2006, through February 3, 2007, in the amount of \$4,565.60. This amount is therefore not at issue in this reconsideration request. DOHA denied the portion of the overpayment the employee received on February 23, 2007, for the period February 4, 2007, through February 17, 2007, in the amount of \$423.20 because the employee was notified on February 22, 2007, that her step had been set incorrectly.

In her request for reconsideration, the employee requests waiver of the \$423.20. She states that she was notified that she was being overpaid by e-mail on February 20, 2007, and she responded by e-mail. She was then told to submit a waiver application which she subsequently submitted on February 27, 2007. She states that a personnel representative indicated the setting of her step “was still being addressed.” She also disputes the validity of the underlying debt. She asserts that she should have been paid at minimum as a GS-15, step 3, and cites 5 C.F.R. part 531 in support of this assertion.

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 interests of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver. *See* Instruction at ¶ E4.1.3. Waiver is usually not appropriate if an employee knew or should have known that she was receiving payments in excess of her entitlements. When the employee has knowledge of the questionable payments, she has a duty to notify an appropriate official and to set aside funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction at ¶ E4.1.4.

In the case before us, there is no fraud, misrepresentation, or lack of good faith on the part of the employee. However, as the employee states in her request for reconsideration, she was informed by e-mail on February 20, 2007, that she was being overpaid. Therefore, on February 23, 2007, when the employee received her salary payment, she was aware that the validity of the payment was in question. Although the employee states that she was told her pay rate was still being addressed, she was given information prior to receiving her salary payment on February 23, 2007, that called its validity into question. Under these circumstances, she had the burden of

notifying an appropriate official and setting aside the funds for eventual repayment. *See* DOHA Claims Case No. 07011606 (January 25, 2007).

Finally, our jurisdiction in this matter is limited to consideration under the waiver statute, 5 U.S.C. § 5584. Therefore, we do not have jurisdiction over any issues concerning the underlying debt. The employee may address her concerns about that issue to DFAS and the Office of Personnel Management (OPM).

Conclusion

The employee's request for relief is denied, and we affirm the September 20, 2007, decision. In accordance with DoD 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