

KEYWORDS: waiver of indebtedness

DIGEST: When an employee knows that she is being overpaid, she has a duty to set aside the erroneously paid funds for repayment, even if the government fails to act after notification. The government has the right to recover such payments irrespective of its dilatory recovery efforts.

CASENO: 07072501

DATE: 7/31/2007

DATE: July 31, 2007

In Re:)
) [REDACTED]) Claims Case No.07072501
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When an employee knows that she is being overpaid, she has a duty to set aside the erroneously paid funds for repayment, even if the government fails to act after notification. The government has the right to recover such payments irrespective of its dilatory recovery efforts.

DECISION

A former Navy employee requests reconsideration of the June 27, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07051602. In that decision, DOHA sustained the decision of the Defense Finance and Accounting Service to deny the employee's request that the government waive collection of \$2,347.72 in indebtedness.

Background

The record shows that effective August 19, 2006, the employee separated from employment with the Department of Navy and transferred to another government agency. Due to administrative error, the employee received salary from the Navy for the pay period following her separation. After recovery of sums for Thrift Savings and some other benefits, the overpayment was reduced to \$2,347.72, which is the amount considered for waiver by our adjudicator.¹

The employee had argued that she was aware of the error and immediately contacted appropriate officials to correct it. She argued that waiver should be granted because the administrative error was the fault of the government. The adjudicator concluded that waiver was inappropriate because the employee knew that the payment was erroneous.² In her reconsideration request, the employee states that she is revising her request for relief to the full amount that the adjudicator had considered because she worked 80 hours in an attempt to resolve the error. She states that pay officials were negligent and failed to promptly respond to her “initial immediate and repeated requests to rectify the administrative error.” She argues that waiver of \$2,347.72 is “a matter of equity and fairness.”

Discussion

We recognize that it is sometimes difficult to have pay officials take action on reported errors such as this. However, it is well-established that an employee or other pay recipient has a duty to monitor her pay and take appropriate action to resolve errors. *Cf.* DOHA Claims Case No. 07030904 (March 20, 2007). Moreover, when the employee knows that she is being overpaid, she also has a duty to set aside the erroneously paid funds for eventual repayment, even if the government fails to act after notification. *See* Instruction ¶ E4.1.4. Performance of such duties is an obligation on the part of the employee, and there is no basis to diminish the recovery of the United States due to the dilatory or improvident recovery actions of pay officials.

Conclusion

The employee’s request for relief is denied, and we affirm the June 27, 2007, decision. In accordance with the Instruction ¶ 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

¹The employee had originally requested waiver of only \$641.08.

²*See* DoD Instruction 1340.23 (Instruction), paragraph E4.1.4 (Feb. 14, 2006): A waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board