

KEYWORDS: waiver of indebtedness; travel advance

DIGEST: Generally, a travel advance cannot be considered for waiver because it cannot be considered as “arising out of an erroneous payment” for purposes of 5 U.S.C. § 5584.

CASENO: 07060802

DATE: 6/12/2007

DATE: June 12, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07060802
)
Claimant)
_____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Generally, a travel advance cannot be considered for waiver because it cannot be considered as “arising out of an erroneous payment” for purposes of 5 U.S.C. § 5584.

DECISION

An employee of the Navy requests reconsideration of the May 11, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07041004. In that decision DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) that the employee’s debt for \$1,885.19 cannot be considered for waiver.

Background

The record shows that on August 28, 2005, the employee received temporary duty (TDY) orders for evacuation from Louisiana to Millington, TN, an alternative work site, due to

Hurricane Katrina. In connection with her TDY, the employee received travel advances totaling \$13,147.55 in six payments. When the employee submitted her travel claim, DFAS determined that her authorized expenses were \$11,262.36, or \$1,885.19 less than the amount advanced. Our adjudicator found that there is no indication that the overpayment was the result of the employee's receipt of erroneous travel orders or other erroneous authorization. Although proper when made, the advances were simply in excess of the employee's reimbursable expenses.

The adjudicator also addressed the only concern raised in the employee's reconsideration request, namely, that another employee in the same office who did not travel to Millington did receive a waiver. Acknowledging that each waiver case is different, the employee believes that such a situation is "very discriminating" against her. Our adjudicator concluded that we have no authority to investigate the employee's claim of disparate treatment, but that we can only review the case at hand. *See* DOHA Claims Case No. 02032601 (May 13, 2002).

Discussion

Under 5 U.S.C. § 5584, our Office has authority to waive the collection of debts arising out of an erroneous payment of pay or allowances, including the erroneous payment of travel allowances, made to an employee when collection would be against equity and good conscience and not in the best interest of the United States. *See* generally DoD Instruction 1340.23 (Instruction), Enclosure 4 (February 14, 2006) for the standards for waiver determination. In this case, it is not apparent to us, and the employee has not proved, that any portion of the advances were erroneous when paid, a condition necessary to the availability of waiver relief. *See* DOHA Claims Case No. 01103018 (December 17, 2001). One can speculate about possible errors that could have been made in the advances to those who did not travel to Millington, as well as possible errors to those who did, but we cannot decide a waiver based on speculation. For the reason cited by the adjudicator, reviewing the record before us, we conclude that the adjudicator's decision was reasonable.

Conclusion

The employee's request for relief is denied, and we affirm the May 11, 2007, appeal decision. In accordance with ¶ E8.15 of the Instruction, 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