

KEYWORDS: waiver of indebtedness

DIGEST: 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.

CASENO: 07072404

DATE: 7/27/2007

DATE: July 27, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No.07072404
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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.

DECISION

A former employee of a Department of Defense agency requests reconsideration of the June 11, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07042603. In that decision, DOHA denied the employee's request that the government waive collection of her indebtedness of \$7,701.08.

Background

The record shows that effective October 28, 2006, the employee resigned and accepted a position in another government agency. However, due to administrative error, the employee erroneously continued to receive salary from the Department of Defense (DoD) from October 29, 2006, through November 11, 2006, and from November 26, 2006, through December 23, 2006. As a result, the employee was overpaid \$7,701.08.

The adjudicator considered the employee's argument that she became aware of the overpayment on November 17, 2006, and that she immediately notified her former payroll clerk. The employee also states that she monitored her bank accounts and continued to report the erroneous overpayments. The employee had argued that waiver should be granted because the administrative error was the fault of the government. The adjudicator found that the employee was aware of the erroneous overpayments as she received them, and concluded that waiver was not available in such circumstances.¹ The adjudicator also advised the employee that under the Instruction, ¶ E8.12, DOHA may accept a request for reconsideration of the appeal decision from her, but that such a request had to be received by DOHA within 30 days from the date of the June 11, 2007, decision.

DOHA received the claimant's request for reconsideration on July 24, 2007, after the 30-day deadline. The employee did not offer any basis for her request for reconsideration, and requested alternatively that we grant her an extension to September 1, 2007, to submit a full reimbursement.

Discussion

The employee's request for reconsideration is untimely. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the employee neither demonstrated good cause nor offered any basis upon which we could grant her request for reconsideration. Furthermore, DOHA has no authority to extend the time for the employee to reimburse the government; we suggest that the employee direct this request to the Defense Finance and Accounting Service.

Conclusion

The employee's request for relief is untimely; and therefore, the June 11, 2007, appeal decision is the final substantive action of the DoD on her request. *See* Instruction, ¶ E8.10.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

¹See 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