

KEYWORDS: waiver of indebtedness-knowledge

DIGEST: Waiver is not appropriate when an employee knows or should know that she is receiving payments in excess of her authorization.

CASENO: 07080701

DATE: 8/21/2007

August 21, 2007__

_____)
In Re:)
 [REDACTED]) Claims Case No.07080701
)
Claimant)
_____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver is not appropriate when an employee knows or should know that she is receiving payments in excess of her authorization.

DECISION

A Defense Department employee requests reconsideration of Defense Office of Hearings and Appeals (DOHA) appeal decision 07051603, dated July 12, 2007, which granted waiver in the amount of \$1,077.17, and denied it in the amount of \$4,092.24.

Background

The record indicates that the employee was issued a permanent change of station (PCS) authorization for a move from New Orleans, Louisiana, to Memphis, Tennessee, on February 25, 2006, because her duty location was relocated to Memphis due to Hurricane Katrina. The

authorization allowed Temporary Quarters Subsistence Expense (TQSE) for up to 60 days from the date of the authorization (until April 26, 2006). The employee closed on a house on April 20, 2006, and therefore TQSE was not authorized after that date. The employee claimed and received a TQSE payment in the amount of \$3,277.47 for the period April 1-30, 2006. Of that amount, she was only entitled to \$2,200.30, creating a debt of \$1,077.17. Later, the employee claimed the subsistence portion of TQSE for the months of May and June and received a total of \$4092.24 for those two months. Thus, the overpayment of TQSE amounted to \$5,169.41. Our adjudicators waived the \$1,077.17 overpayment the employee received for April and denied the remaining \$4,092.24.

On appeal, the employee explains that she did not understand the limitations to TQSE. She states that she told finance personnel that she had purchased a home, and she notes the administrative errors that contributed to her overpayment. She emphasizes the hardship and confusion caused by Hurricane Katrina.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances to a DoD employee 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 (February 14, 2006). Waiver is usually not appropriate if the employee knew or should have known that she was receiving payments in excess of those authorized. Instruction ¶ E4.1.4.

In this case, the PCS authorization indicated that the employee was allowed up to 60 days of TQSE from the date of the authorization. The employee therefore had information as to the limitation on her receipt of TQSE. In such a situation, waiver is generally not appropriate. *See* DOHA Claims Case No. 99060218 (July 26, 1999).¹ While the employee states that her receipt of TQSE was not explained to her, she should have asked for an explanation of the allowance, particularly after she purchased a house.

As our adjudicators explained in our Appeal Decision, neither hardship nor administrative error provides a basis for waiver. However, in light of the employee's situation, she may wish to contact the Defense Finance and Accounting Service, the agency with authority over collections, to discuss repayment arrangements. *See* DOHA Claims Case No. 06120801 (December 19, 2006).

¹The employee states that the cases cited in our Appeal Decision do not apply to her situation. While the facts in the cited decisions are not the same as the employee's situation, the cases stand for the legal principles involved. Here, the cited case stands for the legal principle that waiver is not proper when an employee receives information about the amount of her allowances and then receives overpayments.

Conclusion

The employee's request for additional waiver is denied, and we affirm the decision to deny waiver of \$4,092.24 of the employee's total debt of \$5,169.41. In accordance with 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

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board