

KEYWORDS: waiver of indebtedness

DIGEST: Waiver is not appropriate when an employee is aware or should be aware that she is receiving a payment in excess of her entitlement.

CASENO: 07100201

DATE: 10/10/2007

DATE: October 10, 2007

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In Re: )  
          [REDACTED] ) Claims Case No.07100201  
                                  )  
Claimant \_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver is not appropriate when an employee is aware or should be aware that she is receiving a payment in excess of her entitlement.

**DECISION**

A civilian employee of the United States Navy requests reconsideration of the September 20, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07091004. In that decision, DOHA considered the employee's request that the government waive her indebtedness for the overpayment of salary in the amount of \$3,754.40, but agreed with a recommendation of the Defense Finance and Accounting Service (DFAS) to waive only \$3,515.20 of the indebtedness and deny waiver of the remaining \$239.20.

## **Background**

On July 9, 2006, the employee was promoted from a Budget Analyst YA-02, to a Financial Management Analyst, GS-14, step 3. DFAS later determined that the employee's salary should have been established as a GS-14, step 1. As a result, the employee was overpaid \$3,754.40 from July 9, 2006, through February 17, 2007. DOHA's adjudicator found that the employee acted in good faith in accepting the overpayments which had occurred during the pay periods between July 9, 2006, and February 3, 2007. The waiver of the debt that accrued during that period (\$3,515.20) is not in issue in this reconsideration request. The adjudicator concluded that notification of the error on February 15, 2007, provided sufficient knowledge to alert the employee to question her salary entitlement when she received her pay for the pay period ending (PPE) February 17, 2007, on February 23, 2007.

The employee contends that DOHA's adjudicator erred by not waiving the overpayment during the final pay period (February 4, 2007, through February 17, 2007) because she was not notified of the error in the calculation of her pay until February 15, 2007, two days before the end of the pay period and eight days before pay day. This did not give her time to research her leave and earnings statements and try to understand how the overpayment occurred, and to try to adjust her financial obligations. The employee also stresses that she was truly unaware of the error in setting her GS-14 salary rate until she was notified of the error.

## **Discussion**

The DOHA adjudicator reasonably concluded that the employee had sufficient knowledge to alert her to question the amount of salary she received on February 23, 2007. In such circumstances, waiver is not appropriate for the portion of the overpayment that accrued during PPE February 17, 2007. DoD Instruction 1340.23, ¶ E4.1.4 (February 14, 2006).

Under 5 U.S.C. § 5584, we have authority to waive the collection of erroneous payments of pay and allowances to an employee if collection would be against equity and good conscience and not in the best interest of the United States. The Board recognizes that the government administratively erred in this case when it initially determined that the employee's salary should have been set at the rate of a GS-14, step 3. However, it is not against equity and good conscience to deny waiver for overpayments in pay periods when the employee is advised in sufficient time to alert her to potential problems. In this case, the employee should have questioned the amount of salary payments she received on or after February 15, 2007. An employee is considered to be aware of an erroneous overpayment when she possesses information which reasonably suggests that the validity of the payment may be in question, and waiver is inappropriate when an employee is aware that she is being overpaid. *See* DOHA Claims Case No. 03041512 (June 26, 2003). Time necessary to adjust financial obligations cannot be considered because financial hardship is not a factor for consideration in determining whether waiver is appropriate. DoD Instruction 1340.23, ¶ E4.1.7.

## Conclusion

The employee's request for additional waiver 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

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board