

KEYWORDS: waiver of indebtedness

DIGEST: A waiver is not appropriate under 5 U.S.C. § 5584 when the employee receives a significant unexplained payment of pay or allowances. In such a case, she must hold such funds for repayment to the government and repay them when she is requested to do so or until the propriety of the payment is officially established.

CASENO: 07101502

DATE: 10/19/2007

DATE: October 19, 2007

In Re:)
 [REDACTED]) Claims Case No. 07101502
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver is not appropriate under 5 U.S.C. § 5584 when the employee receives a significant unexplained payment of pay or allowances. In such a case, she must hold such funds for repayment to the government and repay them when she is requested to do so or until the propriety of the payment is officially established.

DECISION

A former employee of the United States Air Force requests reconsideration of the August 15, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07060102. In that decision, DOHA's adjudicator waived collection of \$259.12 of the employee's total indebtedness to the government of \$7,299.18, but denied waiver of the balance of the debt, \$7,040.06. The employee seeks a waiver of the entire indebtedness.

Background

In the decision, DOHA's adjudicator made certain findings based on the written record. She found that on August 12, 2002, the employee was hired as a temporary employee by the Air Force as a Medical Clerk (Office Automation), GS-5, step 1 (\$24,701 annual salary), for a period not to exceed August 12, 2003. The appointment was subsequently extended through August 11, 2004. On August 24, 2003, the employee received a within-grade increase (WGI) to a GS-5, step 2 (\$26,553 annual salary). The Defense Finance and Accounting Service (DFAS) later determined that the employee was not entitled to receive a WGI because she was serving in a temporary position. As a result, the employee was overpaid \$259.12 from the pay period ending August 23, 2003, through December 13, 2003. In December 2003, DFAS corrected the employee's salary in the pay system to the GS-5, step 1 rate. However, due to administrative error, the employee received a retroactive salary payment during the pay period ending December 27, 2003, in the gross amount of \$7,779.92, erroneously compensating her at the GS-5, step 1 rate for the period August 24, 2003, through December 13, 2003.

The adjudicator also found that the employee separated from Federal service on December 11, 2003, and at that time the employee was entitled to receive payment for her lump sum leave in the amount of \$689.36 (\$12.31 per hour X 56 hours). Since the employee was indebted to the United States in the amount of \$8,039.04 (\$259.12 + \$7,779.92), the entire \$689.36 should have been applied to the overpayment. However, only \$467.23 was applied to the overpayment reducing it to \$7,571.81. Additionally, due to another administrative error, retirement benefits premiums were collected from the employee during the pay periods ending August 24, 2002, through December 13, 2003. As a temporary employee, the employee was not eligible to participate in the Federal Employees' Retirement System (FERS). Therefore, the employee was underpaid \$272.63, which was applied to the overpayment, reducing it to \$7,299.18. DOHA's adjudicator found this amount to be owed by the employee.¹

DOHA's adjudicator concluded that the employee acted in good faith in accepting the \$259.12 overpayment of salary from August to December 2003 based on DFAS's erroneous application of the GS-5, step 2 rate. However, the adjudicator concluded that it was not appropriate to waive the other portion of the overpayment, the \$7,779.92, from the pay period ending December 27, 2003. The adjudicator recognized the employee was confused about what the government still owed her but she had immediately contacted officials about the \$7,779.92 payment and was aware that she was overpaid. Accordingly, the adjudicator applied the longstanding rule that when an employee knows or should be aware that she was receiving a payment in excess of her entitlement, waiver is not appropriate and the employee must hold the proceeds from such payment for return to the government.

In her reconsideration request, the employee raises a number of concerns. She asks that

¹The DFAS administrative report, as revised, recommended waiving \$481.25, and denying waiver of \$7,507.29.

we focus on the documents that she submits with her request that were either missing from the record DOHA reviewed or were “re-creations” of documents. Among these is government correspondence acknowledging erroneous deductions of money for both FERS and life insurance, the later of which was not reported by DFAS to us. Another is a difference in the notification correspondence between what she received from DFAS on August 27, 2005, and what DOHA received. The employee also submits copies of DFAS memoranda dated September 22, 2006, and March 16, 2007. The employee requests that we should give more attention to her original waiver with all attachments rather than to the administrative report;² review the memoranda from DFAS reflecting inadequate information at certain points concerning her pay account; and reconsider the waiver decision without assuming that her honesty in approaching her local finance office about the pay for her leave was an acknowledgment by her that she received too much pay in the last six months of her employment. Considering all of the errors and unanswered questions about her account, the employee believes she is entitled to waiver of the entire debt. The employee insists that she did not spend the money in issue, but held on to it awaiting an explanation of how the error happened and of what amount was still due to her.

Discussion

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 considered the additional correspondence provided by the employee and acknowledges the problems in the employee’s pay account as well as the administrative errors made in this case. However, the issue here is whether it is appropriate to waive collection of the uncollected portion of the \$7,779.92, overpayment. The record reasonably supports the adjudicator’s conclusion that the employee knew or had reason to know that the \$7,779.92 payment was paid to her in error. The employee’s action in approaching the local finance office about whether she received too much for her leave naturally infers that she believed that she was receiving more than her proper entitlement. Moreover, the employee’s request for reconsideration does not articulate any reasonable basis for her to believe that she expected a refund of approximately \$7,779.92 for her unused leave or any other entitlement still due to her.³ Accordingly, it is not against equity and good conscience to collect the overpayment in these circumstances, and waiver is not appropriate. *See* DoD Instruction 1340.23, ¶¶ E4.1.4 and E4.1.5. *See also* DOHA Claims Case No. 99111916 (December 8, 1999).

While we recognize that the erroneous payment was due to administrative error and that the employee did not receive a satisfactory response to her initial inquiries, such facts, by

²DoD Instruction 1340.23, ¶¶ E7.4 and 7.5 (February 14, 2006) require the agency to file an administrative report and recommendation with a summary of the facts and circumstances involved. In the absence of clear and convincing contrary evidence from the employee, we accept the agency’s statement of the facts. *See, e.g.*, DOHA Claims Case No. 02030501 (April 18, 2002); and DOHA Claims Case No. 02030503 (March 14, 2002).

³The employee’s own August 18, 2006, letter in support of her waiver attributes the overpayment to a mistake by the civilian personnel representative.

themselves do not entitle her to waiver. *See* DOHA Claims Case No. 02032601 (May 13, 2002). In such a case, she must hold such funds for repayment to the government and repay them when she is requested to do so or until the propriety of the payment is officially established.

The possibility of other errors in the pay account does not justify waiver of the entire remaining indebtedness, especially considering the magnitude of the indebtedness against the likely value of any possible credits still due to the employee.

Our decision here does not, in any way, preclude the employee from requesting DFAS to perform a full review of her pay account. She can raise the issue of the life insurance at that time.

Conclusion

The employee's request for additional waiver relief is denied, and we affirm the August 15, 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

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