

KEYWORDS: waiver of indebtedness; administrative error

DIGEST: Administrative error, by itself, is not a sufficient basis for waiving a debt under 5 U.S.C. §5584.

CASENO: 07103006

DATE: 11/07/2007

DATE: November 7, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No.07103006
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Administrative error, by itself, is not a sufficient basis for waiving a debt under 5 U.S.C. §5584.

DECISION

An employee of the Navy requests reconsideration of the October 1, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07092704. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS) and waived \$10,874.50 of the \$11,265.82 that the employee owes the government due to the overpayment of salary, but denied waiver of the \$391.32 balance of the indebtedness. The employee seeks waiver of the remaining \$391.32 of the indebtedness.

Background

The record shows that effective October 2, 2005, the employee, a Management Analyst, was converted to a career appointment and to the position of an Admin/Tech Spec., NT-05. At the time of the conversion, the employee's Fair Labor Standards Act (FLSA) status was erroneously coded into the Defense Civilian Personnel Data System as non-exempt, which allowed him to be paid an overtime rate 1.5 times his regular rate. As a result of the error, the employee was overpaid at the non-exempt rate for all overtime hours that he worked during the pay periods ending (PPE) October 15, 2005, through January 20, 2007. The employee received notification about his incorrect FLSA status on January 24, 2007.

DOHA's adjudicator concluded that the employee acted in good faith in accepting overpayments which occurred during the period October 2, 2005, through January 6, 2007, and that all conditions necessary for waiver of this portion of the claim have been met. But, she also concluded that because the employee became aware of the government's position with respect to his FLSA status before he received his pay for the PPE January 20, 2007, it was not against equity and good conscience to deny waiver of the overpayment that accrued in that pay period.

In his reconsideration request, the employee asserts that the "alleged" debt arose from administrative error, that he was not provided notice that his salary would be reduced to collect the debt, and that his correct classification is non-exempt.

Discussion

Under 5 U.S.C. § 5584, we have authority to waive collection of erroneous payments of pay and allowances to an employee if the collection would be against equity and good conscience and not in the best interest of the United States. While the overpayments in this case occurred as a result of administrative error, that is not a sufficient basis for granting waiver. *See* Department of Defense Instruction 1340.23 (Instruction), ¶E4.1.3 (February 14, 2006). The adjudicator reasonably concluded that waiver of the overpayment of \$391.32 that accrued during the PPE January 20, 2007, is not appropriate because the employee knew, or should have known when he was paid, that the payment was erroneous. *See* Instruction, ¶E4.1.4.

Our Office has no authority to consider whether DFAS properly complied with notification procedures prior to collecting a debt through salary offset, nor does our authority extend to civilian employee personnel issues such as the employee's FLSA status. *See* 31 U.S.C. § 3702(a)(2).

Conclusion

The employee's request for additional waiver relief is denied, and we affirm the October 1, 2007, decision. 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: William S. Fields

William S. Fields
Member, Claims Appeals Board
Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board