

Background

DOHA's adjudicator made the following relevant findings of fact: the record shows that on January 7, 2007, the employee transferred from the Navy to an agency or office within the Department of Defense. However, due to administrative error, the employee erroneously received a salary payment in the gross amount of \$5,044 from the Navy on February 9, 2007, which represented pay for the period January 21, 2007, through February 5, 2007.

The DFAS administrative report also states that the employee received a \$2,763.98 deposit from the Navy into his savings account for the pay period ending February 3, 2007, and did not access MyPay until 43 days after receipt of the payment. DOHA's adjudicator considered the employee's argument that he checked his leave and earnings statement and bank account on the first pay period following his transfer, saw no discrepancies, and believed that because it was correct at that point there would be no reason to further check. The adjudicator also considered the employee's argument that once he became aware of the overpayment (in the second notice) he took immediate action to investigate and notify his human resources office. However, DOHA's adjudicator concluded that while the employee's actions upon receipt of the second notice were reasonable and prudent, the fact that the employee has his salary deposited into his bank account does not relieve him of the responsibility of verifying his bank statements and questioning any discrepancies.

In his reconsideration request, the employee disputes the conclusion reached by DFAS and DOHA that the erroneous payment from the Navy after the pay period ending February 3, 2007, was "administrative error." The employee argues that the overpayment was a "conscious decision. - not an administrative oversight." The employee also contends that he is not at fault at all in this matter, and that he should not be held liable for payments he received prior to notification, in accordance with the Comptroller General's decision in 56 Comp. Gen. 943 (1977). Finally, he contends that it was error to raise the fact that his pay was directly deposited to his bank account because he had not presented this as a mitigating or extenuating circumstance.

Discussion

Under 5 U.S.C. § 5584, we have authority to waive the collection of erroneous payments of an employee's pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. Department of Defense (DoD) Instruction 1340.23 implements this statute within DoD, and the Standards for Waiver Determinations are found at Enclosure 4. In relevant part, generally persons who receive a payment erroneously from the government acquire no right to it and are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. *See* DoD Instruction 1340.23, ¶ E4.1.1. Waiver is not appropriate when a recipient knows, or reasonably should know, that payment is erroneous, and in such circumstances, the employee has a duty to notify an appropriate official and set aside the funds for eventual repayment. *See* DoD Instruction 1340.23, ¶ E4.1.4.

In this case, there is no error in considering the fact that the employee's salary was directly deposited into his bank account. It was a relevant matter properly raised by DFAS in the administrative report, irrespective of any mitigating or extenuating circumstances involving the employee. In that respect, the employee's circumstances are distinguishable from those of the service members in the Comptroller General decision cited by the employee, and under the Comptroller General's view of "fault" in that decision, the employee here would have been partially at fault because if he had monitored his bank account he should have known there was an error well before he was formally notified of it. *See* 56 Comp. Gen. 943, 951-952. As explained by DFAS and DOHA's adjudicator, the employee had a duty to monitor his bank account, verify his statements and question discrepancies. *See, e.g.*, the Comptroller General's decision in B-254328, Nov. 17, 1993. Additionally, upon receipt of an unexplained salary payment, the employee should have been aware of the strong possibility that it was erroneous and promptly brought it to the attention of appropriate officials. *See* DOHA Claims Case No. 04032919 (March 31, 2004). If the employee had monitored his account as he was required to do, he would have known that he received an erroneous payment of salary in February 2007. DOHA's adjudicator reasonably concluded, in such circumstances, that waiver was not appropriate.

To the extent that it is relevant to any issue here, the employee also failed to prove by clear and convincing evidence that the overpayment was anything other than administrative error.

Conclusion

The employee's request for waiver relief is denied, and we affirm the October 1, 2007, appeal 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