

Background

On October 17, 2006, the employee was offered a position with the Office of Naval Intelligence at a salary of \$51,440 per annum, plus a \$5,000 recruitment bonus. On October 28, 2006, the employee accepted the offer of employment and signed a Premium Recruitment Bonus Agreement. He was subsequently appointed to the position on November 13, 2006. The Navy Human Resources Servicing Center determined that the recruitment bonus was not authorized for the employee's position. On December 1, 2006, the employee was notified that the recruitment bonus was erroneous, and on the same day, the erroneous payment was deposited into his bank account. DFAS determined that the employee was overpaid in the amount of \$5,000.

The employee argues that 5 U.S.C. § 5584 is not applicable to his case because his recruitment incentive was not an administrative error but a fully authorized recruitment action. He states that he should have been notified that he would not receive the recruitment bonus prior to reporting for duty. He argues that he should not have to repay the money because the government breached the Recruitment Bonus Agreement.

Discussion

Our authority is limited to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. 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. Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in 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 received something for nothing. *See* DoD Instruction 1340.23 (Instruction), ¶ E4.1.1 (February 14, 2006). A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See Id.* Collection is not against equity and good conscience when an employee is notified of the erroneous payment promptly. *See* DOHA Claims Case No. 98062401 (October 13, 1998); 68 Comp. Gen. 326 (1989); and B-265874, May 22, 1996.

In this case, the erroneous payment was the result of an administrative error and happened through no fault of the employee. However, the employee received the bonus incentive payment on the same day he was notified that it was erroneous. Under the circumstances, the adjudicator properly denied waiver of the debt. As discussed above, collection is not against equity and good conscience when the employee is promptly notified of the erroneous payment.

The employee's assertion that the government breached the Recruitment Incentive Agreement does not change the outcome in this case under the waiver statute. The employment relationship between the Federal government and its employees is statutory, not contractual. Federal employees are appointed and serve in accordance with applicable statutes and regulations. They are entitled only to those benefits which are conferred by statute or regulation, and therefore, the principles of contract law do not apply. *See* DOHA Claims Case No.

97111206 (January 12, 1998); and Comptroller General decisions 65 Comp. Gen. 679 (1986), 62 Comp. Gen. 171 (1983), 60 Comp. Gen. 71 (1981), and B-219273, Dec. 26, 1985.

Our decision in this case is limited to the employee's request for waiver of repayment of the recruitment bonus he received. We have no authority to render a decision on his entitlement to the recruitment bonus itself. If the employee wishes to challenge the Navy Human Resources Servicing Center's decision in that regard, he should pursue the issue with them.

Conclusion

The member's request for relief is denied, and we affirm October 24, 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