

KEYWORDS: waiver of indebtedness; knowledge

DIGEST: Waiver of an employee's debt is not appropriate where the employee knew or had reason to know that his pay was exceeding his proper entitlement.

CASENO: 07110101

DATE: 11/08/2007

DATE: November 8, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07110101
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Waiver of an employee's debt is not appropriate where the employee knew or had reason to know that his pay was exceeding his proper entitlement.

DECISION

A former employee of the Navy requests reconsideration of the October 10, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07100901. In the appeal decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying the employee's request that the government waive the \$13,667.20 debt he incurred as the result of the erroneous payment of pay and allowances.

Background

The record shows that on February 3, 2007, the employee transferred from the Navy to the Department of Veterans Affairs. However, due to administrative error, the employee erroneously continued to receive salary payments from the Navy through the pay period ending (PPE) March 31, 2007, causing an overpayment in the gross amount of \$13,667.20. DOHA's adjudicator considered the employee's argument that the overpayments resulted from administrative error, that he was outside the United States and did not receive his leave and earnings statements (LES) and that he had his pay going to three different bank accounts. The adjudicator concluded that the employee knew or should have known that he was being overpaid because he had a duty to monitor his bank accounts and would have discovered the discrepancies of the continued salary payments from DFAS if he had done so.

In his request for reconsideration, the employee argues that the adjudicator did not consider his LES for PPE February 3, 2007, which showed that he expected a pay out for 252.85 hours of annual leave and 51.10 hours of compensatory time. As a result, he argues that he expected "a couple of payments to cover this." He also continues to argue that he was out of the country when the overpayments occurred and was unaware of them.

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. We recognize that the erroneous payments in this case were due to administrative error, but that is not a sufficient basis by itself for granting waiver. *See* Department of Defense Instruction 1340.23 (Instruction), ¶ E4.1.3 (February 14, 2007). DOHA's adjudicator reasonably concluded that the employee had a duty to monitor his bank accounts, verify bank statements, and question discrepancies. *See, e.g.*, DOHA Claims Case No. 97013102 (July 23, 1997) and DOHA Claims Case No. 99111916 (December 8, 1999), *aff'd* by the Deputy General Counsel (Fiscal), December 12, 2000, cited in the appeal decision. The employee's reconsideration request does not rebut this. If the employee had monitored his bank accounts, he would have noticed more than a couple deposits. He received deposits every two weeks through PPE March 31, 2007, in an amount similar to his net pay when he was working for the Navy (*e.g.*, the net pay for PPE February 3, 2007).

The employee's argument that he expected to be paid for his annual leave is unpersuasive. Generally, an employee who earns leave under title 5, United States Code, Chapter 63, Subchapter I, and who transfers to a position in another agency under the same leave system, cannot receive a lump sum payment for accumulated or accrued annual leave. *See* title 5 Code of Federal Regulations (C.F.R.) Section 550.1203(h). In such a case, the leave balance is transferred with the employee. The employee has not offered any evidence indicating that he expected to receive a lump sum payment of his annual leave in accordance with 5 C.F.R. § 550.1203 or any other provision of law.

Conclusion

The employee's request for waiver relief is denied, and we affirm the October 10, 2007, appeal 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