

KEYWORDS: waiver of indebtedness; administrative error

DIGEST: Administrative error, by itself, is not a sufficient basis for granting waiver of an indebtedness under 5 U.S.C. § 5584.

CASENO: 07121701

DATE: 2/06/2008

DATE: February 6, 2008

_____)
In Re:)
 [REDACTED]) Claims Case No. 07121701
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Administrative error, by itself, is not a sufficient basis for granting waiver of an indebtedness under 5 U.S.C. § 5584.

DECISION

A civilian employee of the Navy requests reconsideration of the November 30, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07111601. In that decision, DOHA sustained the recommendation of the Defense Finance and Accounting Service (DFAS) to deny waiver of the \$1,828.76 debt that the employee accrued after the government miscalculated his rate of overtime pay.

Background

The record shows that when the employee was promoted in June 2006, the Notification of Personnel Action (SF-50) effecting the promotion erroneously changed the employee's status

under the Federal Labor Standard Act (FLSA) from exempt to nonexempt. Afterwards, when the employee worked overtime, his rate of pay was not capped, and as a result, he was overpaid a total of \$1,828.78 from June 25, 2006, through April 14, 2007. DOHA's adjudicator concluded that if the employee had carefully examined his leave and earnings statements (LES), he would have discovered that the overtime rate he received significantly exceeded the \$38.07 rate clearly stated in Block 6 (Basic/OT Rate) of the LES.

On December 17, 2007, our Office received a faxed reconsideration request from the employee. We received the signed original of this request on December 26, 2007. The substance of the request is strong disagreement with the appeal decision and the employee's "very adamant" belief that he was not at fault and should not be penalized for someone else's mistake and/or negligence. The employee stated that he did not have additional information to provide at that time, but again emphasized that he was appealing. He stated that as soon as he and his attorney had additional information to send to us, he would do so. His final statement was that he would "be in touch" with this Office. We received no further correspondence.

Discussion

A waiver applicant cannot obtain an indefinite extension of time to supplement his request for reconsideration of a waiver application under 5 U.S.C. § 5584, by simply noticing an appeal to our Office. The employee here specifically reserved his right to supplement the record on his request for reconsideration, but he had only until the end of the period allowed in the governing Instruction to support his request. Department of Defense Instruction (Instruction) 1340.23, ¶ E8.12 provides that DOHA must receive a request for reconsideration within 30 days of the date of an appeal decision. Since the 30th day was on Sunday, December 30, 2007, the employee had until Monday, December 31, 2007, to offer any additional support for his request. This Office received no additional correspondence from the employee through December 31, 2007. If he had shown good cause, the employee could have extended the initial 30 days for up to an additional 30 days. He did not do so. No request for reconsideration may be accepted after one 30-day extension. *Id.*

The only timely filed substantive argument made by the employee is that the government had committed administrative error. We agree that the government committed administrative error, but the fact that an erroneous payment is solely the result of administrative error or mistake by the government is not sufficient, in and of itself, to support a waiver. *See* Instruction ¶ E4.1.3. In this case the adjudicator concluded that the employee knew, or should have known, that there was an error in his overtime pay. The employee's December 17, 2007, submission does not address this conclusion. The adjudicator had a proper basis for denying waiver relief. *See* Instruction ¶ E4.1.4.

Conclusion

The member's request for relief is denied, and we affirm the November 30, 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: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board