

KEYWORDS: waiver of indebtedness; employee furnished with erroneous Notification of Personnel Action (SF-50) that appeared correct on its face

DIGEST: Waiver of erroneous payments of retention incentive pay is granted to an employee where the employee was issued a Notification of Personnel Action (SF-50) stating that he was entitled to receive retention incentive pay, and the employee was reasonably not aware that the payments were erroneous.

CASENO: 08032801

DATE: 4/09/2008

DATE: April 9, 2008

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In Re: )  
          ) [REDACTED]  
          ) )  
          ) Claims Case No.08032801  
          ) )  
          ) )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Waiver of erroneous payments of retention incentive pay is granted to an employee where the employee was issued a Notification of Personnel Action (SF-50) stating that he was entitled to receive retention incentive pay, and the employee was reasonably not aware that the payments were erroneous.

## **DECISION**

The employee requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) decision in DOHA Claim No. 08010801, dated February 28, 2008, in which DOHA denied the employee's application for waiver of collection of the debt he owed the government due to an overpayment of salary.

### **Background**

The employee, an Electronics Engineer, GS-12, step 8, at an Air Force installation was entitled to receive retention incentive pay. The employee accepted a position as an Acquisition Program Manager, GS-13, step 4, at a new Air Force installation. On May 14, 2006, when the employee transferred to the new installation for his new position, he was no longer entitled to receive retention incentive pay. The employee was paid correctly from May 14, 2006, through October 27, 2006. On October 26, 2006, a Notification of Personnel Action (SF-50) was issued at the new installation erroneously authorizing the employee retention incentive pay effective October 15, 2006. As a result, the employee was overpaid \$2,238.24, from October 15, 2006, through April 28, 2007.

Our Office denied waiver of the overpayment on the grounds that the employee should have questioned his entitlement to retention incentive pay five months after his promotion and transfer to the new installation. In his reconsideration request, the employee states that his words were misinterpreted by our Office. He inquired about his ability to keep his retention incentive pay prior to accepting the position. He states that he questioned the director of the division and the matter was referred to his branch chief. He states that his branch chief worked the issue, but after several memos and phone conversations, she indicated that "there was nothing management could do right now." The employee accepted the offer, but once he arrived at the new installation, he spoke again with the director to gain some insight into the situation. He continued to lobby for the retention incentive pay, but never received a definite answer. When he received the SF-50, he thought that the director had finally made the pay adjustments that he had asked him to do on several occasions. He relied on the SF-50 to validate his receipt of a retention allowance. His director left the installation soon after the SF-50 was issued.

### **Discussion**

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. A waiver usually is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* ¶ E4.1.4 of the Instruction. A waiver usually

is not appropriate when an employee receives a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, and does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* ¶ E.4.1.5.

In the present case, although the employee received an SF-50 with an effective date of May 13, 2006, issued by his outgoing installation terminating his retention incentive pay due to his transfer to his new installation, the employee continued to lobby for retention incentive pay once he arrived at his new installation. When the employee received the retention incentive pay at his new installation, he immediately checked his SF-50. The SF-50 dated October 26, 2006, stated that he would receive retention incentive pay from October 15, 2006, through October 14, 2007.<sup>1</sup> There is nothing contained in the SF-50 that would have alerted the employee to an error. His leave and earnings statements indicated that he was being paid retention incentive pay in accordance with the SF-50.

These facts all support the employee's position that he reasonably believed he was entitled to receive retention incentive pay. Our Office and the Comptroller General have held that waiver is appropriate when an employee receives pay in accordance with an SF-50 which appears to be correct on its face but is later found to be erroneous. In that circumstance, it was reasonable for the employee to accept pay in accordance with the SF-50. *Cf.* DOHA Claims Case No. 97082535 (November 4, 1997) (waiver granted in case where an employee requested an upgrade be granted as an exception to regulations, was informed no exception had been granted, but then received an SF-50 stating the exception had been granted); and B-255550, Feb. 25, 1994 (waiver granted in case where an employee inquired about his entitlement to a special salary rate, was given erroneous advice from his personnel office and then was issued five SF-50s reflecting he was entitled to the special salary rate). Accordingly, we grant waiver of the employee's indebtedness in the amount of \$2,238.24.

### **Conclusion**

The employee's request for relief is granted. The debt in the amount of \$2,238.24 is therefore waived. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

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<sup>1</sup>The SF-50 dated October 26, 2008, was issued by the employee's new installation. It reflected his new position title and number. Under Block #5-B. Nature of the Action, it reflects "Retention Incentive."

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board