

KEYWORDS: waiver of indebtedness; knowledge of overpayment

DIGEST: After an employee transferred from one department to another, she continued to receive salary from her prior department. The employee was aware that she had erroneously received salary after her transfer. When an employee is aware that she is being overpaid, she cannot reasonably expect to retain the overpayments, but must set them aside for eventual repayment.

CASENO: 08051406

DATE: 5/21/2008

DATE: May 21, 2008

In Re:)
) [REDACTED])
) Claims Case No.08051406)
))
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

After an employee transferred from one department to another, she continued to receive salary from her prior department. The employee was aware that she had erroneously received salary after her transfer. When an employee is aware that she is being overpaid, she cannot reasonably expect to retain the overpayments, but must set them aside for eventual repayment.

DECISION

The claimant requests reconsideration of the April 29, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08042202. In that decision DOHA affirmed the initial determination of the Defense Finance and Accounting Service (DFAS) not to waive overpayments of salary in the amount of \$18,960.00.

Background

The record shows that effective September 30, 2007, the employee transferred from the Department of the Navy to the Department of Veterans Affairs. Due to an administrative error, she continued to receive salary payments from the Navy during the period September 30, 2007, through December 22, 2007. As a result, the employee was overpaid in the gross amount of \$18,960.00.

Our Office denied the employee's request for waiver because the employee acknowledged that she was aware she was receiving erroneous salary payments. In her reconsideration request, the employee argues that she should not be held responsible for the overpayment because it resulted from an administrative error committed by her former department. She states that she put everyone on notice that she was being overpaid. She argues that in the alternative she should only be held liable for the net amount of the debt. She states that she received a total of six checks in the net amount of \$12,238.30, and she should not be held liable for the gross amount of the debt because she did not receive all the other deductions associated with the payments.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim for an overpayment of salary an employee received if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is not appropriate when the employee was aware of the overpayment. *See* DOHA Claims Case No. 00081602 (November 22, 2000) and DOHA Claims Case No. 00073101 (August 21, 2000), *aff'd* by Deputy General Counsel (Fiscal) on December 21, 2001.¹ The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* DoD Instruction 1340.23, ¶ E4.1.4 (February 14, 2006).

In the present case the erroneous payments were made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part in that regard. However, the employee states that she was aware that she erroneously received

¹In DOHA Claims Case No. 00073101, we stated that the application of the tax laws to an employee's income is a matter solely within the jurisdiction of the taxing authority and that an employee's tax liability on an overpayment does not permit partial waiver of an amount not otherwise appropriate for waiver.

salary payments. A person who receives erroneous payments from the government does not acquire title to the money and has a duty to return the money when asked to do so. *See* DOHA Claims Case No. 98040110 (June 8, 1998). We appreciate the fact that the employee brought the error to the attention of numerous individuals in her former department's human resources office. However, an employee or service member derives no entitlement to an erroneous payment of pay or allowances because the government makes a mistake. *See* DOHA Claims Case No. 97122313 (February 24, 1998). In this situation, the employee should have set aside the money until she was asked to return it.

The employee states that she is willing to pay back the amount of money that she actually received in the net amount of \$12,238.30. However, the amount of the employee's debt equals the gross amount of the payment, including amounts such as insurance premiums, retirement contributions, and federal and state income tax withholding which are withheld and submitted to the proper authorities on the employee's behalf.² *See* DOHA Claims Case No. 00081602, *supra*; DOHA Claims Case No. 97050502 (July 23, 1997); and B-234731, June 19, 1989. If DFAS cannot recoup the deducted amounts from those authorities, the employee must repay those amounts to DFAS. *See* DOHA Claims Case No. 00073101, *supra*.

Conclusion

The employee's request for relief is denied, and we affirm the April 29, 2008, decision to deny waiver in the amount of \$18,960.00. 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.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

²The employee indicates that DFAS has apparently collected \$1,790.40 on her behalf. If that is correct, that amount should be credited to her debt.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board