

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: 08021103

DATE: 2/13/2008

DATE: February 13, 2008

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In Re: )  
      [REDACTED] ) Claims Case No. 08021103  
                  )  
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 former employee of the Air Force requests reconsideration of the January 24, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07121711. In that decision, DOHA affirmed the initial determination of the Defense Finance and Accounting Service denying waiver relief under 5 U.S.C. § 5584.

**Background**

The record indicates that the employee resigned from the Air Force Materiel Command on May 12, 2007. He had been correctly paid through that date. He was entitled to receive

payment for 60 hours of accrued annual leave in the gross amount of \$1,823.40 (net amount \$1,118.67). However, due to administrative error, the employee continued to receive two additional regular salary payments from May 13, 2007, through June 9, 2007. As a result, the employee was erroneously overpaid \$4,740.84. The net amount the government owed the employee as a lump sum leave payment, \$1,118.67, was applied to the employee's debt, reducing the overpayment to \$3,622.17.

DOHA's adjudicator considered the employee's argument that the payments were erroneous payments made by the government and that he had taken follow-up steps to make sure that his pay was stopped at the time of his resignation. He stressed that he was not available to open his leave and earnings statements (LES) until after the government corrected the error. However, the adjudicator found that the employee acknowledged receipt of the LES during the period of the overpayment. The adjudicator concluded that if the employee had reviewed the LES at that time he would have been alerted to the overpayments. Additionally, the adjudicator found that the employee had his salary payments deposited directly to his bank account, and concluded that if he had monitored his account, verified his statements, and questioned any discrepancies, he would have identified these payments as erroneous prior to expending the funds. The adjudicator applied the long-standing principle that it is inappropriate to waive an overpayment of salary when an employee knows, or should know, that he is receiving salary to which he is not entitled.

In his request for reconsideration, the employee does not address the adjudicator's analysis that focused on the employee's responsibility in identifying the two erroneous salary payments. Instead, he suggests possible explanations for the government's acknowledged administrative error in these payments. The employee also remarks that ". . . I was not surprised that my Form 52 [presumably the Standard Form 52 requesting his resignation effective on May 12, 2007] wasn't processed in a timely manner. In fact I suspected it wouldn't be."

### **Discussion**

Under 5 U.S.C. § 5584, we have authority to waive repayment of erroneous payments of salary if repayment would be against equity and good conscience and not in the best interests of the United States. Generally, waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or the lack of good faith on the part of the member. *See* 5 U.S.C. § 5584 and DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). However, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* ¶ E4.1.3 of the Instruction. It is not against equity and good conscience to deny waiver when a reasonable person would have suspected that he was receiving payments in excess of his entitlements. In such an instance, the recipient 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* ¶ E4.1.4 of the Instruction.

DOHA's adjudicator reasonably concluded that the employee should have been alerted to overpayments if he had reviewed the LES he received. Similarly, considering the amounts and timing, the employee should have immediately recognized the erroneous nature of each of the two payments as soon as he checked his bank deposits. In this case the employee should have exercised greater caution by promptly reviewing any received LES and bank deposits for error, considering his acknowledgment that he anticipated problems of this nature. Accordingly, it was not against equity and good conscience to deny waiver relief in this case.

### **Conclusion**

The employee's request for relief is denied, and we affirm the January 24, 2008, 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

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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: William S. Fields

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William S. Fields  
Member, Claims Appeals Board