

KEYWORDS: waiver of indebtedness

DIGEST: When an employee is aware or should be aware that he has received an overpayment, he does not acquire title to the excess amount, and has a duty to hold the money for eventual repayment. In such circumstances, waiver is not appropriate under 5 U.S.C. § 5584.

CASENO: 08050201

DATE: 5/21/2008

DATE: May 21, 2008

---

In Re: )  
          ) [REDACTED] )  
          ) ) Claims Case No.08050201  
          ) )  
          ) )  
Claimant )

---

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When an employee is aware or should be aware that he has received an overpayment, he does not acquire title to the excess amount, and has a duty to hold the money for eventual repayment. In such circumstances, waiver is not appropriate under 5 U.S.C. § 5584.

**DECISION**

An employee of the Air Force requests reconsideration of the March 7, 2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07122601. In that decision, DOHA followed a recommendation of the Defense Finance and Accounting Service (DFAS) and waived \$602.40 of the \$4,778.40 that the employee owes the government due to the overpayment of salary, but denied waiver of the \$4,176.00 balance of the indebtedness. The

employee seeks waiver of the remaining \$4,176.00 of the indebtedness.

### **Background**

The record shows that during the pay period February 19, 2006, through March 4, 2006, the employee's salary changed from \$69,280.00 (\$33.20 per hour) to \$70,924.00 (\$33.98 per hour). In addition, he was retroactively compensated for salary at the rate of \$33.98 per hour for the period January 8, 2006, through February 18, 2006. He continued to receive salary at the rate of \$33.98 per hour through January 6, 2007, causing an overpayment of \$436.80.

Due to an administrative error, the employee's annual pay adjustment erroneously increased his salary to \$40.01 per hour (\$83,510.00) effective January 7, 2007. At that time, his salary rate should have been established as \$34.21 per hour (\$71,403.00). As a result, he was overpaid \$4,176.00 during the period January 7, 2007, through May 12, 2007. In addition, in May 2007 the employee erroneously received a retroactive payment in the amount of \$165.60.

DOHA's adjudicator concluded that the employee acted in good faith in accepting overpayments which occurred during the period January 8, 2006, through January 6, 2007, in the amount of \$436.80, and on May 26, 2007, when he erroneously received the retroactive payment of \$165.60. The adjudicator found that all conditions necessary for waiver of \$602.40 (\$436.80 + \$165.60) of the claim have been met. She also concluded that because the employee became aware of the overpayment which began on January 20, 2007, it was not against equity and good conscience to deny waiver of the overpayment which occurred during the period January 7, 2007, through May 12, 2007.

In his request for reconsideration, the employee states that this situation is not his fault and that it has created an extreme hardship on his finances. He states that it was a result of administrative error and that he did all he could do to correct the error. He also states that he provided in his original waiver request documentation, in the form of e-mails, reflecting that he was told by pay specialists that his pay was correct. Finally, he asks DOHA to explain why his current leave and earnings statement (LES) reflects that he owes a debt in the amount of \$15,450.40.

### **Discussion**

Under 5 U.S.C. § 5584, we have authority to waive collection of erroneous payments of pay and allowances to an employee if the 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 decisions are based only on the written record. While the overpayments in this case occurred as a result of administrative error, that is not a sufficient basis for granting waiver. *See* Department of Defense Instruction 1340.23 (Instruction), ¶E4.1.3 (February 14, 2006). When an employee receives pay to which he knows or should know he is not entitled, he does not acquire title to the overpayment

and has a responsibility to hold it for eventual repayment to the government. *See* ¶E4.1.4 of the Instruction.

In the employee's original waiver request, he stated that he became aware of the erroneous payment on January 20, 2007, when he noticed an excessive increase in pay on his LES. He stated that he told his supervisors and finance office about the excessive pay, but he was under the impression that this was due to reimbursement for nonpayment of 2005 locality pay. Although the employee states that he saved over 20 e-mails reflecting that he was told he was entitled to this increase in pay, as pointed out by the DOHA adjudicator, there is no such documentation contained in the record. While we appreciate that the employee was persistent in trying to resolve the error in his pay, the fact remains that he was aware he was being overpaid as of January 20, 2007. Since he was aware he was being overpaid, he did not acquire title to the payments and had a duty to hold them for repayment to the government. *See* DOHA Claims Case No. 02062402 (July 18, 2002)<sup>1</sup> and DOHA Claims Case No. 01070905 (December 31, 2001).

Financial hardship does not provide a basis for waiver. *See* ¶ E4.1.7 of the Instruction. The employee should direct any questions concerning repayment of his debt or interpretation of the balance reflected on his current LES to DFAS.

### **Conclusion**

The employee's request for additional waiver relief is denied, and we affirm the March 7, 2008, decision. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

---

Jean E. Smallin  
Acting Chairman, Claims Appeals Board

Signed: William S. Fields

---

William S. Fields  
Member, Claims Appeals Board

---

<sup>1</sup>That case was decided under 10 U.S.C. § 2774 because the claimant was a service member. However, the standards for waiver are the same for civilian employees and service members.

Signed: Catherine M. Engstrom

---

Catherine M. Engstrom  
Member, Claims Appeals Board