

KEYWORDS: waiver of indebtedness

DIGEST: An employee received duplicate incentive award payments. The record shows that following the first incentive award payment, his leave and earnings statement indicated that the award was collected. Waiver of an erroneous payment of a duplicate incentive award issued to the employee over a month later is granted where the employee was reasonably not aware that the payment was erroneous.

CASENO: 08051501

DATE: 5/30/2008

DATE: May 30, 2008

In Re:)
) [REDACTED]
))
) Claims Case No. 08051501
))
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee received duplicate incentive award payments. The record shows that following the first incentive award payment, his leave and earnings statement indicated that the award was collected. Waiver of an erroneous payment of a duplicate incentive award issued to the employee over a month later is granted where the employee was reasonably not aware that the payment was erroneous.

DECISION

The employee requests reconsideration of the April 29, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08040107. In that decision, our Office waived \$12,124.04 of the \$13,365.04 debt and denied waiver of the remaining \$1,241.00. The employee is now requesting waiver of the \$1,241.00.

Background

The record shows that the employee was overpaid \$12,124.04 during the pay period ending March 8, 2003, through March 19, 2005. This amount was waived and is not at issue in this reconsideration request.

In the pay period ending June 11, 2005, the employee received an incentive award in the gross amount of \$1,241.00. However, in the pay period ending June 25, 2005, his leave and earnings statement (LES) indicated that the award was collected. On August 6, 2005, the record indicates that he erroneously received a duplicate incentive award in the amount of \$1,241.00. Our Office denied this portion of the overpayment because the employee should have questioned his entitlement to duplicate award payments.

The employee's reconsideration request consists of a DD Form 2789, Waiver/Remission of Indebtedness Application. It appears that the employee intended to use this form to request waiver of the additional \$1,241.00, and we will accept it as such. He states that he was unaware that he was overpaid. He insists that he did not receive duplicate award payments. He agrees that he received the award payment in pay period ending June 11, 2005, but maintains that in the pay period ending June 25, 2005, the award was collected from his earnings.

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 interest 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 is generally not appropriate when a recipient of a significant unexplained increase in salary does not attempt to obtain a reasonable explanation from an appropriate official. *See* Instruction ¶ E4.1.5. 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* Instruction ¶ E4.1.5.

In this case, the employee believed he was entitled to an incentive award, and he did in fact receive an award in the amount of \$1,241.00, which was reflected on his LES for the pay period ending June 11, 2005. However, in the pay period ending June 25, 2005, collection was made for a retroactive cash award overpayment. In pay period ending August 6, 2005, the

employee received a duplicate incentive award in the amount of \$1,241.00. The record supports the employee's contention that he had a reasonable expectation of receiving the \$1,241.00 cash award which was paid to him in the pay period ending August 6, 2005.

Conclusion

The employee's request for relief is granted. The debt in the amount of \$1,241.00 is therefore waived. In accordance with DoD 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