

KEYWORDS: waiver of indebtedness; no erroneous payment; cannot be considered for waiver

DIGEST: A former employee was paid an additional professional allowance by the Navy for his services as a civilian physician under a Physicians Comparability Allowance Agreement. The agreement required the employee to serve for a specified period of time to earn the allowance. When the employee terminated his services prior to the end of the period of contracted service, he was required to refund the allowance payments he had received. The employee contends that the government effectively terminated his service for convenience, and that under his contract, he is not required to refund the allowance payments under these circumstances. The employee, however, did not file a compensation claim with the Navy and the Office of Personnel Management for his right to retain the allowance payments. Instead, he asked that DOHA consider the circumstances of his termination in a request to waive collection of his debt under 5 U.S.C. § 5584. Since the allowance payments were not erroneous when made, we cannot consider the employee's waiver request.

CASENO: 08052701

DATE: 5/30/2008

DATE: May 30, 2008

)	
In Re:)	
[REDACTED])	Claims Case No.08052701
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A former employee was paid an additional professional allowance by the Navy for his services as a civilian physician under a Physicians Comparability Allowance Agreement. The

agreement required the employee to serve for a specified period of time to earn the allowance. When the employee terminated his services prior to the end of the period of contracted service, he was required to refund the allowance payments he had received. The employee contends that the government effectively terminated his service for convenience, and that under his contract, he is not required to refund the allowance payments under these circumstances. The employee, however, did not file a compensation claim with the Navy and the Office of Personnel Management for his right to retain the allowance payments. Instead, he asked that DOHA consider the circumstances of his termination in a request to waive collection of his debt under 5 U.S.C. § 5584. Since the allowance payments were not erroneous when made, we cannot consider the employee's waiver request.

DECISION

A former employee of the United States Navy requests that we reconsider the April 29, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08040103. In that decision, DOHA affirmed the initial decision of the Defense Finance and Accounting Service (DFAS) holding that collection of the employee's debt to the government in the amount of \$3,274.48 cannot be considered for waiver under the provisions of title 5, United States Code, Section 5584 (5 U.S.C. § 5584) because no erroneous payment was involved.

Background

The record shows that effective May 25, 2007, the employee, a physician, enrolled in the Federal Civilian Physicians Comparability Allowance Service Agreement (PCA) entitling him to an annual allowance of \$14,000. The employee was required to serve with the Department of the Navy as a physician from May 25, 2007, through May 25, 2009. However, on August 31, 2007, the employee resigned prior to completing his PCA contract, thus requiring recoupment of the allowance he received (\$3,274.48).

In his request for reconsideration, the employee argues that the PCA states that the amount paid to a physician is not due for repayment if the employment agreement is terminated at the government's convenience. The employee contends that he was "coerced and constructively terminated" by a supervisor when he tried to raise concerns about health, safety, and other deficiencies at the facility in which he worked. The employee argues that he was threatened with termination if he did not voluntarily resign.

Discussion

In rendering our decision, we are cognizant of the possibility that the employee may be entitled to certain "whistleblower" protections with respect to his former employer. The employee is not precluded from addressing the matters he has raised here with the proper authorities such as representatives from the Office of Naval Inspector General. The claimant's compensation claim for the allowance payments and any other compensation claim arising from his termination of service is cognizable by the Department of the Navy and the Office of

Personnel Management. *See* 31 U.S.C. 3702(a)(2). Our Office is not a proper venue to adjudicate such issues.

The narrow issue that we are concerned with here is whether the employee's debt can be considered for waiver under the provisions of 5 U.S.C. § 5584. Based on the facts in this record, the claim of the United States against the employee is not one "arising out of an erroneous payment of pay or allowances." *See* 5 U.S.C. § 5584(a). Nothing in the record suggests an error about the government's payment of the allowance to the employee when the employee received the allowance payments. Thus, the statutory precondition for waiver consideration is not satisfied. *Cf.* DOHA Claims Case No. 07050113 (May 17, 2007); and 61 Comp. Gen. 292 (1982).

Conclusion

The employee's request for waiver relief is denied, and we affirm the April 29, 2008, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee's request for waiver relief under 5 U.S.C. § 5584.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board