

KEYWORDS: waiver of indebtedness; overcrediting of annual leave

DIGEST: An employee's annual leave account was overcredited because of an error in his service computation date (SCD). The employee was unaware his SCD was incorrect until late June 2007. Under 5 U.S.C. § 5584, his request for waiver of a claim against him for the erroneously credited leave he used during the year in which he was aware his SCD was incorrect may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

CASENO: 08101502

DATE: 10/30/2008

DATE: October 30, 2008

_____)
In Re:)
 [REDACTED]) Claims Case No. 08101502
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee's annual leave account was overcredited because of an error in his service computation date (SCD). The employee was unaware his SCD was incorrect until late June 2007. Under 5 U.S.C. § 5584, his request for waiver of a claim against him for the erroneously credited leave he used during the year in which he was aware his SCD was incorrect may not be waived because he did not acquire title to the excess amounts and has a duty to return them to the government.

DECISION

An employee requests reconsideration of the September 15, 2008, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 08080106. In that decision, DOHA waived \$343.62 of the \$1,740.60 that the employee was overpaid through erroneously credited annual leave. The employee seeks waiver of remaining \$1,396.98.

Background

On July 12, 2004, the employee accepted a position within the Department of Defense. When establishing his service computation date (SCD), the Defense Finance and Accounting Service (DFAS), gave him credit for three years and four months of military service. As a result, the employee's SCD was established as February 13, 2001, and he was credited with annual leave at an accrual rate of six hours per pay period. However, DFAS later determined that the employee was not entitled to receive credit for his military service for leave purposes. As a result, DFAS determined that his SCD should have been established as July 12, 2004, and that he should have been credited with annual leave at an accrual rate of four hours per pay period. DFAS reconstructed the employee's annual leave account on an annual basis beginning with leave year 2004 in order to reflect the proper four-hour rate of leave accrual. Based on this reconstruction, DFAS determined that the employee used leave in excess of his entitlement in leave years 2005, 2006, and 2007, resulting in a total salary overpayment of \$1,740.60.

Our Office agreed with DFAS's recommendation to waive \$343.62, which represents the unearned annual leave for leave year 2005 (negative balance of four hours) and leave year 2006 (negative balance of nine hours). This amount is not at issue in this reconsideration request. However, our Office denied \$1,396.98, which represents unearned annual leave for leave year 2007 (negative balance of 49 hours), because the employee became aware his SCD was erroneously established sometime in "late June 2007/early July 2007."

In his request for reconsideration, the employee states that once his SCD was corrected in July 2007, he no longer over-accrued annual leave. He states that beginning with the pay period ending August 4, 2007, he properly began earning 6 hours of annual leave per pay period. He states that this was not an over-accrual of leave but was a result of the completion of his service requirement for the increased leave. He also points out errors in his annual leave balance for 2006 and 2007. He states that he was made aware of the error in his SCD on June 27, 2007. Once he was made aware of the error, he acted in good faith in making restitution for the overpayment. When he received the debt letter totaling \$1,740.60, he paid the amount in full. In addition, he requests restoration of 106 hours of annual leave taken from his annual leave balance before he received the debt letter referencing the overpayment in the amount of \$1,740.60. He also requests waiver of \$127.32 which was taken from his pay before he received the overpayment notices.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive repayment of erroneous payments of salary if repayment would be against equity and good conscience and not in the best interest of the United States. Generally, waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* 5 U.S.C. § 5584 and DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). While the overpayments in this case occurred as a result of administrative error, that is not sufficient basis in and of itself for granting waiver. *See* ¶ E4.1.3 of the Instruction. The standard we employ to determine fault is whether a reasonably prudent person knew or should have known that he was receiving payments in excess of his entitlements. Waiver is not appropriate when the employee is aware that he is being overpaid. The employee does not acquire title to the excess payments merely because the government made an administrative error, and the employee has a duty to return the resulting erroneous amounts to the government when asked to do so. *See* DOHA Claims Case No. 98110227 (November 19, 1998).

Under 5 U.S.C. § 5584, we are authorized to waive only those claims for pay and allowances which arise from an erroneous payment. In cases involving erroneously credited annual leave, an erroneous payment occurs only if reconstruction of the employee's leave account to correct the crediting error produces a negative leave balance for any given leave year. Since an employee with a negative leave balance has been paid for absences not covered by leave, he is indebted for the pay, and that indebtedness may be considered for waiver under 5 U.S.C. § 5584. In contrast, when erroneously credited annual leave is set off against the employee's current leave balance, there has been no overpayment of pay qualifying for waiver. *See* Comptroller General decisions B-250228, Feb. 22, 1993; B-211881, Dec. 9, 1983; and B-188181, June 24, 1977. If an employee used erroneously credited leave, repayment of the resulting overpayment of pay may be waived if it appears he did not know, or have reason to know, of the error. *See* B-211881, *supra*.

At issue in this case is the overpayment in the amount of \$1,396.98 which represents unearned annual leave for leave year 2007 (negative balance of 49 hours). We appreciate the fact that after the employee became aware his SCD was incorrectly established, he was in regular contact with payroll officials and his human resources department. The employee stated in his original waiver request that when he received a phone call from his human resources department alerting him that his SCD was incorrect, he was also told that he had been overpaid two hours of annual leave per pay period since his employment began in July 2004, resulting in an indebtedness of annual leave. However, after he knew his SCD was incorrectly established and he had been credited with leave to which he was not entitled, he started taking large blocks of annual leave. The record reflects he took 152 hours of annual leave from July 2007 to January 2008. Under these circumstances, waiver is not appropriate.

In addition, the employee suggests that he has a legal claim to the 106 hours of annual leave taken from his leave balance and for the \$127.32 taken from his pay. However, our authority in this matter extends to only the issue of waiver of the employee's debt. If the 106

hours represent the overcredited hours of annual leave deducted in reconstructing the employee's leave account, they may not be considered for waiver, because this adjustment did not constitute an erroneous payment of pay within the meaning of the waiver statute. *See* B-226573, April 27, 1987. The employee should contact DFAS in regard to the calculation of his leave for the years 2006 and 2007 and the calculation of his debt with specific reference to the \$127.32 deducted from his pay.

Conclusion

The employee's request for relief is denied, and we affirm the September 15, 2008, decision. In accordance with DoD 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

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board