

Background

On March 5, 2007, the employee accepted a career-conditional appointment as a GS-11, step 1. However, it was later determined that her appointment should have been established as a GS-9, step 1. This administrative error caused the employee to be overpaid \$359.20 during the period March 4, 2007, through March 17, 2007. On March 22, 2007, a Notification of Personnel Action (SF-50) was issued correcting the employee's grade from a GS-11, step 1, to a GS-9, step 1, effective March 5, 2007. The employee was paid correctly from pay period ending March 31, 2007, through May 12, 2007. However, on May 14, 2007, an SF-50 was issued erroneously changing the employee's grade from a GS-9, step 1, to a GS-11, step 1, effective May 13, 2007. As a result, the employee was overpaid \$6,106.40 during the period May 13, 2007, through January 5, 2008.

Our Office waived the employee's debt for the erroneous payment of \$359.20. The issue in this reconsideration is whether DOHA acted reasonably in denying waiver of the employee's debt in the amount of \$6,106.40. In her request for reconsideration, the employee states that she believed when she received her SF-50 on May 14, 2007, that she was entitled to her grade being changed to a GS-11, step 1. She was told when her grade was initially changed from a GS-11, step 1, to a GS-9, step 1, that after she gained some work experience, she would become a GS-11, step 1. She quotes a Federal Times article concerning managers being allowed to promote talented employees more quickly.

Discussion

Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. *See* Department of Defense Instruction (Instruction) 1340.23, ¶ E4.1.1 (February 14, 2006). Under 5 U.S.C. § 5584, we have the authority to grant waiver to an employee 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, fault, misrepresentation or lack of good faith on the part of the employee. *See* Instruction ¶ E4.1.2. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction ¶ E4.1.1.

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. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. 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* Instruction ¶ E4.1.4. A waiver generally is not appropriate in cases when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation

from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in event that repayment should be necessary. *See* Instruction ¶ E4.1.5. A waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous. *See* Instruction ¶ E4.1.6.

In this case, the \$6,106.40 overpayment resulted from administrative error in placing the employee in the wrong grade in May 2007 after her grade had been corrected in March 2007. There is no fraud, misrepresentation, or lack of good faith on the part of the employee. The issue is whether the employee is partially at fault. On March 22, 2007, an SF-50 was issued correcting the employee's salary from a GS-11, step 1, to a GS-9, step 1. The employee states that she was told after gaining experience in her work, she would become a GS-11, step 1. The employee states that she assumed the SF-50 she received on May 14, 2007, changing her grade to a GS-11, step 1, was a correct action. However, she never questioned her supervisor or other appropriate officials concerning this grade change. She has not presented any documentation reflecting she had a reasonable expectation that she would be promoted to a GS-11, step 1, by May 2007. Under these circumstances, she should have at least questioned her supervisor and pay officials concerning the grade change, especially since her grade had been decreased two months earlier from a GS-11, step 1, to a GS-9, step 1. *See* DOHA Claims Case No. 07030509 (March 14, 2007). Since the employee failed to do so, collection of this portion of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States.

Conclusion

The employee's request for relief is denied, and we affirm the November 28, 2008, decision to deny waiver in the amount of \$6,106.40. In accordance with ¶ E8.15 of the Instruction, 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