

KEYWORDS: waiver of indebtedness

DIGEST: In November 2007 an employee’s annual salary was increased to \$104,167.00. In March 2008 the employee was notified that his salary should have been established as \$83,621.00. In May 2008 he was advised that his salary should have been established as \$74,811.00. Waiver was granted for the overpayments he received through March 2008, but denied in their entirety for the period after he was put on notice in March that he was being overpaid. Partial waiver of the erroneous payments of salary attributable to the employee’s salary further being reduced from \$83,621.00 to \$74,811.00 is granted for the period between March 2008 and May 2008, since the record supports the employee’s contention that he had a reasonable expectation of receiving salary at the annual rate of \$83,621.00 during this period.

CASENO: 09012806

DATE: 2/11/2009

DATE: February 11, 2009

)	
In Re:)	
[REDACTED])	
)	Claims Case No.09012806
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In November 2007 an employee’s annual salary was increased to \$104,167.00. In March 2008 the employee was notified that his salary should have been established as \$83,621.00. In May 2008 he was advised that his salary should have been established as \$74,811.00. Waiver was granted for the overpayments he received through March 2008, but denied in their entirety

for the period after he was put on notice in March that he was being overpaid. Partial waiver of the erroneous payments of salary attributable to the employee's salary further being reduced from \$83,621.00 to \$74,811.00 is granted for the period between March 2008 and May 2008, since the record supports the employee's contention that he had a reasonable expectation of receiving salary at the annual rate of \$83,621.00 during this period.

DECISION

A civilian employee of United States Army requests reconsideration of the January 2, 2009, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08111706. In that decision, DOHA considered the employee's request that the government

waive his indebtedness in the amount of \$15,735.20. DOHA waived \$10,351.20 of the government's claim and denied waiver of \$5,384.00. The employee now seeks waiver of an additional \$1,404.80.

Background

Effective November 11, 2007, the employee received a promotion raising his salary from \$74,001.00 per year to \$104,167.00 per year. However, it was later determined that the employee's salary was established in error. On March 26, 2008, the employee first became aware of an error. He was told by his human resources specialist that his salary should have been established as \$83,621.00 per year. He continued to be paid at the salary of \$104,167.00 until May 22, 2008. In May 2008 he was notified that his salary should have been established as \$74,811.00. Due to administrative error, the employee's salary was miscalculated during the period November 11, 2007, through June 7, 2008, causing an overpayment in the amount of \$15,735.20.

The employee submitted two separate applications for waiver of indebtedness. The first application, dated June 13, 2008, lists the amount of overpayment as \$8,947.20. In this request, the employee sought waiver of the overpayment prior to being notified by phone on March 26, 2008, by his human resources office, that his salary should have been established at \$83,621.00 per year. His second application dated September 22, 2008, lists the amount of overpayment as \$5,213.60. In this request, the employee sought waiver of the overpayment attributable to his salary further being reduced to \$74,811.00, prior to being notified of the error on May 27, 2008.

In her decision, the DOHA adjudicator waived \$10,351.20 of the employee's debt, and denied waiver of \$5,384.00, the portion of the debt that occurred after the employee was informed on March 26, 2008, that he was being overpaid. The adjudicator's decision to deny waiver of the portion of the debt that occurred after the employee was informed on March 26, 2008, that he was being overpaid was based on a finding that while he was told that his salary should have been established as \$83,621.00, he continued to be paid at the salary of \$104,167.00.

Therefore, the adjudicator found that he should have set aside the overpayment for repayment whenever the error was corrected.

In his request for reconsideration, the employee states that the overpayments he received were a result of two different errors, and he was notified of the errors at different times. He contends that notification of the first error did not make him aware of the second error or provide him with any reason to further question his pay rate. He admits that he was notified of the first error on March 26, 2008, lowering his salary from \$104,167.00 to \$83,621.00. He states that this was consistent with the *Notification of Personnel Action* (Standard Form 50), he later received. However, in May 2008 he received a second SF-50 effective November 11, 2007, further lowering his salary to \$74,811.00. He states that on May 27, 2008, his personnel officer told him that a second error had been discovered that was not known at the time he was notified of the original error in March 2008. He states that the personnel officer told him that the local office had used improper authority to provide him with any pay raise resulting from the position change on November 11, 2007, and therefore, a second personnel action correction was needed to further lower his total pay to \$74,811.00. The employee states that four pay periods occurred between the dates that he was notified of the first and second pay errors (those ending March 29, April 12, April 26, and May 10, 2008). He states that according to the Defense Finance and Accounting Service's spreadsheet, he was overpaid \$1,170.40 during each of these pay periods. He contends that a portion of those overpayments was attributable to the first pay error (which he admits he was aware of after the first notification), and the remainder was attributable to the second pay error (which he contends he was not aware of before the second notification). He asserts that the amount attributable to the second pay error during this time was \$351.20 for each of the four pay periods, for a total of \$1,404.80. He contends that he should not be held responsible for the \$1,404.80.

Discussion

Under § 5 U.S.C. 5584, we have authority to waive erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. A waiver usually is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee 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* DoD Instruction 1340.23 (Instruction) ¶ E4.1.4.

We have consistently held that an employee is considered to be aware of an erroneous overpayment when he possesses information which reasonably suggests that the validity of the payment may be in question. Once he has received information which reasonably suggests that the validity of a payment may be in issue, he should set aside the overpayment for return to the government any excess amounts received from that time forward. *See* DOHA Claims Case No. 07011606 (January 25, 2007); DOHA Claims Case No. 06112735 (December 6, 2006); DOHA

Claims Case No. 97031009 (July 18, 1997); and Comptroller General decision B-259124, Feb. 23, 1995. However, as stated in the Instruction, whether waiver will be granted depends on the facts in each case. See ¶ E4.1.8. of the Instruction.

In the present case, on March 26, 2008, the employee was notified by telephone by an human resources specialist that he was being overpaid. He was told that his salary should have been established as \$83,621.00 per annum. The employee states that he was notified of a second error on May 27, 2008, when he received an SF-50 reducing his salary to \$74,811.00. A statement from the employee's human resources specialist supports the employee's version of events. In addition, the Defense Finance and Accounting Service (DFAS) has advised us that the SF-50 further reducing the employee's salary to \$74,811.00 was not processed until May 27, 2008. The record contains no other indication that the employee was advised that his salary should have been further reduced from \$83,621.00 to \$74,811.00, until May 27, 2008, when he received his SF-50 and spoke again to personnel within his human resources office. Under these circumstances, it was reasonable for the employee to accept pay in accordance with the notification he was given on March 26, 2008. See DOHA Claims Case No. 08032801 (April 9, 2008); DOHA Claims Case No. 97082535 (November 4, 1997); and B-260843, Oct. 24, 1996. Accordingly, we waive an additional \$1,404.80 of the employee's indebtedness.¹

Conclusion

The employee's request for relief is granted. The debt in the amount of \$1,404.80 is therefore waived. 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

¹During the period March 16, 2008, through May 10, 2008, the employee had a reasonable expectation of receiving salary in the gross amount of \$13,331.20 (\$41.66 per hour). He was entitled to salary in the gross amount of \$11,926.40 (\$37.27 per hour). The difference between his reasonable expectation and entitlement is \$1,404.80.

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board