

Background

The record indicates that the employee enrolled in a Physicians Comparability Allowance Service Agreement (PCA) on January 17, 2003, for one-year, and became entitled to receive an annual allowance of \$9,000 (with monthly stipend payments of \$344.80). However, due to an administrative error, the employee erroneously continued to receive PCA payments based on the rate that would have applied if he had remained under a two-year agreement (\$15,000, with monthly payments of \$575.20). As a result, the employee was overpaid \$23,961.60 from February 9, 2003, through February 3, 2007.

The employee argues that in January 2003 he knew that he was entitled to a three percent annual pay increase that Federal employees generally received, and as a result he expected that his salary would increase by \$135 per pay period, which, he states that he “in fact received.” The employee then states that when he “actually received only an increment of \$75, [he] believed this reflected [his] selection of the smaller PCA and did not pursue further.” Although he now realizes that he was in error, he argues that he made a good faith effort to understand his leave and earnings statement (LES), “and that, due to the small amounts, a reasonable person could easily not be aware of the excess payments.” The employee asks us to consider the errors by DOHA and other government representatives in analyzing his pay account.

The employee also asks that we consider other factors. Briefly, some factors that he cites are that, since September 11, 2001, he has been extremely busy working with military forces “directly concerning their survival and combat effectiveness” and he has “little time or inclination to closely consider [his] salary.” He argues that he could earn more in the private sector and that he works approximately 60 hours a week with no additional compensation. While he failed to detect the overpayment in 2003, he thought that everything was correct because he signed up year after year for a one-year PCA and saw no changes. He states that his installation is subject to base closure and realignment procedures and as a result there is insufficient personnel support. This also created a situation where “the computer process of obtaining a pay stub is so slow and cumbersome for [him] that for several months [he has] not downloaded them” and he will not “take the time when it means slowing an effort to save a young person’s life or injury.” He acknowledges he made errors, but that other government employees made multiple errors. The burden of the mistake should be shared.

Discussion

Under 5 U.S.C. § 5584, our Office has the authority to waive collection of 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, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2 (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the Government is not a sufficient basis in and of

itself for granting a waiver. *See* Instruction ¶ E4.1.3. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. *See* Instruction ¶ E4.1.4. An employee is at least partially at fault and waiver is precluded, when, in light of all of the circumstances, it is determined that he should have known that an error existed and taken steps to have it corrected. *See* DOHA Claims Case No. 02062401 (July 29, 2002).

Basically, the issue here is one of fact. Considering the employee's January 2003 salary changes, would a reasonable person in the employee's circumstances notice that he was being overpaid? In this regard, the adjudicator's basic analysis of the situation in the appeal decision is sustainable.

The adjudicator notes that during the pay period ending (PPE) January 11, 2003, which was the pay period prior to the effective date of the new one-year PCA, while the employee was still under a two-year PCA, his net pay was \$3,263.50 with his LES clearly showing PCA payments in the amount of \$575.20. During the next pay period, the PPE January 25, 2003, when the new one-year PCA should have become effective, the employee received an annual pay increase in his regular pay. At this time, his net pay increased from \$3,263.50 to \$3,341.57. The adjudicator incorrectly noted the difference between the two net amounts as \$25.45, and the employee cited this as error, the fifth error on the part of the government concerning his pay account.¹ We agree with the employee that his net pay increased by more than \$78, but that is even less supportive of his position than if it had been only \$25.45. His LES continued to show PCA payments in the amount of \$575.20. Moreover, if the employee expected a per-pay-period increase of gross basic salary of about \$135, as he indicates, and also expected his gross PCA stipend to decrease (from \$575.20 to \$344.80 per pay period), a reasonable person would expect a net pay decrease between the two pay periods. Instead, it increased by more than \$78 per pay period. The adjudicator properly identified the increase as unsupportive of the employee's position.²

We appreciate the employee's service to the nation, but the employee should have been able to identify an overpayment in his PCA by a superficial review of his LES and/or the total amount of net pay.

Conclusion

The employee's request for reconsideration is denied, and we affirm the June 3, 2009, appeal decision. In accordance with the Instruction, ¶ E8.15, this is the final administrative

¹The employee's reconsideration request appears to misstate the adjudicator's error as \$25.25, but the appeal decision notes the difference as \$25.45.

²While it is not clear how the adjudicator derived \$25.45 as the difference, in the appeal decision she was clearly aware of and considered the increase in net pay from \$3,263.50 for the PPE January 11, 2003, to \$3,341.57 for the PPE January 25, 2003. Considering all of the circumstances, the adjudicator's error is harmless.

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: William S. Fields

William S. Fields
Member, Claims Appeals Board