

KEYWORDS: waiver of indebtedness; direct deposit; responsibility to verify bank statements

DIGEST: Generally, the fact that an employee has salary sent directly to a bank does not relieve the person of the responsibility of verifying his bank statements, questioning any discrepancies, and setting the money aside for repayment.

CASENO: 09080601

DATE: 8/11/2009

DATE: August 11, 2009

| | |
|--------------|--------------------------|
| _____) | |
| In Re:) | |
| [REDACTED]) | Claims Case No. 09080601 |
| Claimant) | |
| _____) | |

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Generally, the fact that an employee has salary sent directly to a bank does not relieve the person of the responsibility of verifying his bank statements, questioning any discrepancies, and setting the money aside for repayment.

DECISION

A retired employee requests reconsideration of the July 24, 2009, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 09020502. In that decision DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of a duplicate payment of environmental premium pay for exposure to asbestos. The overpayment is \$2,499.65.

Background

The record shows that on pay period ending (PPE) June 29, 2002, the employee received a payment in the amount of \$2,499.65, for exposure to asbestos during 1991-2001. On PPE July 13, 2002, he received a duplicate payment in the same amount. Due to this administrative error, the employee is indebted to the United States in the amount of \$2,499.65. The employee has repaid this debt in full, but has requested waiver of the debt.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive claims for erroneous payments of pay and certain allowances, if collection would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. In this case, the employee states that he was not aware that he was erroneously paid because he had direct deposit. In his request for reconsideration the employee insists that the payment was not erroneous, but was an anticipated payment.¹ While an administrative error did occur, we have long held that the waiver statute does not automatically apply to relieve the debts of employees, who, through no fault of their own, have received erroneous payments from the government.

Waiver action under 5 U.S.C. § 5584 is a matter of grace or dispensation, and not a matter of right that arises solely by virtue of an erroneous payment being made by the government. Whether to grant waiver is decided on the principles of equity and fairness presented in each case. Although the employee stated he was not aware of the overpayment because he had direct deposit, we have consistently held that the fact an employee has his salary deposited directly into his bank account does not relieve him of the responsibility of verifying his bank statements and questioning any discrepancies. Since the employee failed to do so, we believe collection of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States. *See* DOHA Claims Case No. 97011408 (June 10, 1997).

¹The employee included a copy of a memorandum from the U.S. Army Aviation and Missile Command, dated June 26, 2002, advising the employee to expect a payment of \$2,499.64. He did not provide documentation for the second payment in that amount.

Conclusion

The employee's request for relief is denied, and we affirm the July 24, 2009, Appeal Decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

///Original Signed///

Jean E. Smallin
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board