

KEYWORDS: waiver of indebtedness

DIGEST: An employee who was deployed from January 2007 to July 2007 was reassigned from the General Schedule (GS) to the National Security Personnel System (NSPS) in June 2007. He received a *Notification of Personnel Action* (Standard Form 50) reflecting the reassignment. As a result, he was entitled to receive overtime pay at the rate of one and one-half times his base salary retroactive to January 2007. It was later determined that this reassignment was erroneous and that he was overpaid for overtime. Waiver was granted for the overpayments he received through the pay period ending July 21, 2007, but denied for the retroactive payment he received in pay period ending August 4, 2007, in the amount of \$4,276.92, which represented overtime pay at the rate of one and one-half times his basic salary for the period May 27, 2007, through July 21, 2007. Waiver of the remaining \$4,276.92 is granted since the record supports the employee's contention that he had no reason to question the payment.

CASENO: 09080501

DATE: 8/17/2009

DATE: August 17, 2009

_____)	
In Re:)	
[REDACTED])	Claims Case No. 09080501
))	
Claimant)	
_____)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who was deployed from January 2007 to July 2007 was reassigned from the General Schedule (GS) to the National Security Personnel System (NSPS) in June 2007. He received a *Notification of Personnel Action* (Standard Form 50) reflecting the reassignment. As a result, he was entitled to receive overtime pay at the rate of one and one-half times his base salary retroactive to January 2007. It was later determined that this reassignment was erroneous and

that he was overpaid for overtime. Waiver was granted for the overpayments he received through the pay period ending July 21, 2007, but denied for the retroactive payment he received in pay period ending August 4, 2007, in the amount of \$4,276.92, which represented overtime pay at the rate of one and one-half times his basic salary for the period May 27, 2007, through July 21, 2007. Waiver of the remaining \$4,276.92 is granted since the record supports the employee's contention that he had no reason to question the payment.

DECISION

An employee of the Air Force requests reconsideration of the June 25, 2009, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09060903. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remainder of the debt.

Background

Effective January 28, 2007, the employee was reassigned from the General Schedule (GS), as a GS-11, step 8, to a pay band under the National Security Personnel System (NSPS), as a YA-02. The reassignment entitled the employee to receive overtime pay at the rate one and one-half times his basic salary, instead of his overtime being capped at the GS-10, step 1 rate. The Defense Finance and Accounting Service (DFAS) later determined that the employee's reassignment to a YA-02 was erroneous. Due to this administrative error, during the pay period ending June 23, 2007, the employee received a retroactive payment in the amount of \$9,045.44, which represented overtime pay at the rate of one and one-half times his basic salary for the period January 28, 2007, through June 9, 2007.

The record further shows that due to an administrative error, the employee's pay was miscalculated during the period June 24, 2007, through August 4, 2007, causing an underpayment in the amount of \$2,875.90. Since the employee was overpaid \$9,045.44, the \$2,875.90 underpayment was applied to the debt, reducing it to \$6,169.54.

Additionally, during the pay period ending July 21, 2007, the employee erroneously received a retroactive payment in the amount of \$1,875.38, which represented overtime pay for the period June 10, 2007, through July 7, 2007. Finally, due to the erroneous reassignment, the employee received a retroactive payment in the amount of \$4,276.92 during the pay period ending August 4, 2007, which represented overtime pay at the rate of one and one-half times his basic salary for the period May 27, 2007, through July 21, 2007. As a result, the employee was overpaid a total of \$12,321.84.

In DOHA Claim No. 09060903, the adjudicator waived \$8,044.92, the portion of the erroneous salary payments the employee received from the pay period ending June 23, 2007, through July 21, 2007. However, the adjudicator denied waiver of \$4,276.92, the retroactive

salary payment he received in the pay period ending August 4, 2007. The adjudicator denied waiver of this payment because she found that the employee should have questioned it after receiving retroactive payments of \$9,045.44 and \$1,875.38 in prior pay periods.

In his request for reconsideration, the employee states that he was deployed from January 2007 to July 2007. He states that in the month of June 2007 he was informed by his home office that he was reassigned from a GS-11, step 8, to YA-02, effective January 28, 2007, through the remainder of his deployment. He attaches the Standard Form 50 issued on June 20, 2007, reassigning him to YA-02, effective January 28, 2007. He also attaches the Standard Form 50 issued on July 30, 2007, extending his reassignment to YA-02 not to exceed August 1, 2007, effective May 28, 2007. He states that money was deducted from his pay twice. He indicates that when he contacted officials to check on the reductions, he was told that the money was withheld because he had reached the pay cap for overtime under the GS system. He was told that since the reductions were incorrect he should expect another large payment to correct the errors. Therefore, he thought he was entitled to the \$4,276.92 when it appeared in his next pay check.

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, fault, misrepresentation 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.

In the present case, during the employee's deployment, he was reassigned to NSPS and was advised that he was entitled to receive overtime pay at the rate of one and one-half times his basic salary. He was issued a Standard Form 50 reassigning him to NSPS. He received his first retroactive payment in pay period ending June 23, 2007, in the amount of \$9,045.44, which represented overtime pay at the rate of one and one-half times his basic salary for the period January 28, 2007, through June 9, 2007. The employee was then underpaid during the period June 24, 2007, through August 4, 2007, in the amount of \$2,875.90. He states that he asked about the error in his paycheck and was told that the payments would be restored. The record reflects that the employee was not notified that his reassignment to a YA-02 was erroneous until months after he received his final retroactive payment for overtime performed during his deployment. These facts all support the employee's position that he reasonably believed he was entitled to receive the retroactive payment in the amount of \$4,276.92 during the pay period ending August 4, 2007. Our Office and the Comptroller General have held that waiver may be appropriate when an employee receives pay in accordance with an SF-50 which appears to be correct on its face but is later found to be erroneous. In that circumstance, it was reasonable for the employee to accept pay in accordance with the SF-50. *See* DOHA Claims Case No.

09012806 (February 11, 2009); DOHA Claims Case No. 08032801 (April 9, 2008); DOHA Claims Case No. 97082535 (November 4, 1997); and B-260843, Oct. 4, 1996. Accordingly, we waive an additional \$4,276.92.

Conclusion

The employee's request for relief is granted. The debt is waived in the additional amount of \$4,276.92. 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