

DATE: July 23, 1997

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In Re:

[REDACTED]

Claimant

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Claims Case No. 97013102

## CLAIMS APPEALS BOARD DECISION

### DIGEST

1. Generally, the fact that an employee has salary sent directly to a bank does not relieve him of the responsibility of verifying his bank statements, questioning any discrepancies and setting the money aside for repayment.
2. A retired employee who, due to an administrative error, erroneously received payment for 80 hours salary and 8 hours annual leave is considered partially at "fault" where he did not question the overpayment when deposited to his bank account. Waiver under 5 U.S.C. 5584 is precluded.

### DECISION

This is in response to an appeal of the U.S. General Accounting Office's (GAO) Settlement Certificate Z-2942744-050, August 28, 1995, which denied waiver under 5 U.S.C. 5584, of a retired employee for waiver of a debt of \$2,568.72, which arose when he received payment for 80 hours of salary and 8 hours of annual leave after he retired. Pursuant to Public Law No. 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay (salary) or allowances, including travel, transportation, or relocation expenses and allowances was transferred to the Director, Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

### Background

The employee retired August 25, 1994. Due to an administrative error, he erroneously received payment for 80 hours salary for the period between August 28, 1994, through September 10, 1994. The payment was effected by direct deposit to the employee's bank account and resulted in an overpayment of \$2,335.20. He was also paid for 8 hours of leave to which he was not entitled resulting in an overpayment of \$233.52.

The Defense Finance and Accounting Service (DFAS) recommended waiver of \$233.52. In the Settlement Certificate, GAO determined that the employee acted in good faith in accepting the erroneous payment for 8 hours of leave, and waived \$233.52. However, with regard to the overpayment of \$2,335.20 for salary, GAO found that the conditions necessary for waiver of that portion of the claim were not met, since an employee's decision to have his checks deposited directly into his bank account does not relieve him of the responsibility of verifying his statements and questioning any discrepancies made to his account before expending the funds.

In his appeal, the employee argues that he was unaware that he had been erroneously overpaid and still does not know whether he was overpaid. In addition he argues that his retirement was incident to a reduction-in-force (RIF) which he feels was unfair. He states that he appealed to the Merit Systems Protection Board (MSPB), and had the appeal been granted, he would have been returned to his position without loss of pay. He states that he believes that since his separation/retirement was unjust, he should be allowed to retain the overpayment on the basis that he should still be a federal employee. Finally, he argues that if part of the debt was appropriate for waiver, it should all be waived.

## Discussion

Under 5 U.S.C. 5584, we may waive collection of erroneous payments of pay and certain allowances made to specified federal employees, if collection would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arose from 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. See, 5 U.S.C. 5584(b)(1) and the Standards for Waiver, 4 C.F.R. 91.5(b) (1996). The standard employed to determine whether a member was at "fault" in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement and made inquiries or brought the matter to the attention of the appropriate officials.

In the present case, the erroneous payment was made as a result of administrative error and there is no indication of fraud, misrepresentation or lack of good faith on the employee's part. However, the fact that the employee has pay sent directly to a bank does not relieve the person of responsibility of verifying his statement and questioning any discrepancies. See, DOHA Claims Case No. 97011408 (June 10, 1997). An employee has a responsibility to monitor his bank account, and when he receives an unexplained salary payment, he should be aware of the strong likelihood that it is erroneous and promptly bring it to the attention of the appropriate agency officials. Since the employee did not do so, he cannot be considered without fault in the matter, precluding waiver.

This Office has no jurisdiction to determine whether or not the employee's RIF was appropriate or unjust. The fact that the employee hoped to have the MSPB reverse the action and restore him to his former position does not change the fact that at the time he received the erroneous salary payment he had been separated and retired and clearly should have known that he was not entitled to continue receiving his salary. Nor does the fact that the employee believes he should still be employed by his agency provide a basis for allowing waiver of the debt.

With regard to his argument that since the erroneous payment for leave was waived, the entire debt should be waived, we disagree. DFAS and GAO considered the matter carefully. Based on the facts presented, they determined that a reasonable person might not be aware of an extra 8 hours of annual leave paid in a lump sum payment for 344 hours of accrued leave. However, with regard to a significant payment, such as a two week salary payment, made after retirement, they found that an employee monitoring his bank account, should have been aware of such a payment and the strong likelihood that it was erroneous and promptly brought it to the attention of the appropriate agency officials. Since the employee did not do so, they concluded that he must be considered at least partially at "fault " in the matter, precluding waiver. We agree.

## Conclusion

We uphold the denial of the waiver request.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

